

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
Civil No. 07-05325(JLL)

- - - - - X

JUDY LARSON, BARRY HALL, :  
and TESSIE ROBB, :  
individually and on behalf of :  
others similarly situated, :  
Plaintiffs, : October 21, 2009  
: :  
-vs- :  
SPRINT NEXTEL CORPORATION :  
and SPRINT SPECTRUM, LP d/b/a :  
SPRINT NEXTEL, and NEXTEL :  
FINANCE COMPANY, :  
Defendants. : Newark, New Jersey

## B E F O R E :

THE HONORABLE JOSE L. LINARES,  
UNITED STATES DISTRICT COURT JUDGE

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above-entitled proceedings.

s/Phyllis T. Lewis, CSR, CRR

PHYLLIS T. LEWIS, C.S.R., C.R.R.

Official Court Reporter - United States District Court  
P.O. Box 25588, Newark, New Jersey 07101  
(732) 735-4522

1 A P P E A R A N C E S:

2 CARELLA, BYRNE, BAIN, GILFILLAN,  
3 CECCHI, STEWART & OLSTEIN, PC  
4 5 Becker Farm Road  
Roseland, New Jersey 07068  
BY: JAMES E. CECCHI, ESQ.  
LINDSEY H. TAYLOR, ESQ.  
-and-  
SEEGER WEISS, LLP  
550 Broad Street  
Newark, New Jersey 07102  
BY: STEVEN WEISS, ESQ.  
-and-  
FREED & WEISS, LLC  
111 West Washington Street (Suite 1331)  
Chicago, Illinois 60602  
BY: JEFFREY A. LEON, ESQ.  
PAUL WEISS, ESQ.,  
Attorneys for Plaintiffs.

KELLEY, DRYE & WARREN, LLP  
200 Kimball Drive  
Parsippany, New Jersey 07054  
BY: JOSEPH A. BOYLE, ESQ.  
LAURI MAZZUCHETTI, ESQ.,  
-and-  
QUINN EMANUEL  
BY: DOMINIC SUPRENANT, ESQ.  
865 S. Figueroa Street (10th Floor)  
Los Angeles, California 90017  
Attorneys for Defendants,  
Sprint Nextel Corporation,  
Sprint Spectrum, LP, and  
Nextel Finance Company.

19

20

21

22

23

24

25

1 A P P E A R A N C E S (CONTINUED):

2 LAW OFFICES OF ANTHONY L. COVIELLO, LLC.

3 307 Montgomery Street

4 Bloomfield, New Jersey 07003

BY: ANTHONY L. COVIELLO, ESQ.

-and-

5 BOCK & HATCH, LLC

6 134 N. La Salle Street (Suite 1000)

Chicago, Illinois 60602

BY: RICHARD J. DOHERTY, ESQ.

-and-

7 LAKIN, CHAPMAN, LLC

8 300 Evans Avenue

PO Box 229

9 Wood River, Illinois 62095

BY: ROBERT J. EVOLA, ESQ.

10 Attorneys for Objector, Jessica Hall.

11 PINILIS HALPERN, LLP

12 160 Morris Street

Morristown, New Jersey 07960

BY: WILLIAM J. PINILIS, ESQ.

-and-

13 SCOTT A. BURSOR, ESQ.

14 369 Lexington Avenue (10th Floor)

New York, New York 10017

-and-

15 BRAMSON, PLUTZIK,

16 MAHLER & BIRKHAEUSER, ESQS.

2125 Oak GroveRoad (Suite 120)

Walnut Creek, California 94598

17 BY: ALAN PLUTZIK, ESQ.,

18 Attorneys for Objectors,

Lina Galleguillos, Michael Moore and

19 Antranick Harrentsian.

(Also for fees in connection with the Ayaad versus  
20 Sprint, Robertson versus Nextel, Molfetas and Lee  
actions)

21 LITE, DE PALMA, GREENBERG & RIVAS, LLC

22 Two Gateway Center (12th Floor)

Newark, New Jersey 07102

23 BY: JOSEPH DE PALMA, ESQ.

24 (For fee application)

1 A P P E A R A N C E S: (Continued)

2 WEINSTEIN LAW FIRM  
3 518 East Tyler Street  
4 Athens, Texas 75751  
5 BY: JEFF WEINSTEIN, ESQ.  
6 Attorneys for Objectors,  
7 Sandra and Kenneth Griffin

8 DRINKER, BIDDLE & REATH  
9 One Logan Square  
10 18th and Cherry Streets  
11 Philadelphia, Pa. 19103  
12 BY: WILLIAM M. CONNOLLY, ESQ.  
13 Attorneys for AT&T Mobility, LLC

14

15

16

17

18

19

20

21

22

23

24

25

1 THE CLERK: All rise.

2 THE COURT: Good morning.

3 Please be seated.

4 All right. This is in the matter of Larson, et al.  
5 Versus Sprint Nextel, et al.

6 Counsel, your appearances for the record, please.

7 MR. CECCHI: James Cecchi, Carella, Byrne, and  
8 Lindsey Taylor for the class.

9 With me today, your Honor, is Stephen Weiss from  
10 Seeger Weiss --

11 MR. WEISS: Good morning, your Honor.

12 MR. CECCHI: -- and Jeff Leon and Paul Weiss from  
13 Freed & Weiss.

14 MR. LEON: Good morning, your Honor.

15 MR. PAUL WEISS: Good morning, your Honor.

16 MR. BOYLE: Good morning, your Honor.

17 Joe Boyle with Lauri Mazzuchetti from Kelley, Drye  
18 & Warren on behalf of Sprint.

19 With us today is Dominic Suprenant from the Quinn  
20 Emanuel firm in Los Angeles, also counsel to Sprint.

21 MR. SUPRENANT: Good morning.

22 THE COURT: Good morning.

23 MR. EVOLA: Robert Evola, Lakin Chapman on behalf  
24 of the Hall objectors.

25 THE COURT: I'm sorry. What was your name, sir?

1 MR. EVOLA: Robert Evola.

2 THE COURT: And who do you represent?

3 MR. EVOLA: The Jessica Hall objectors.

4 THE COURT: Okay.

5 MR. DOHERTY: Richard Doherty, Bock & Hatch, also  
6 on behalf of the Hall objectors.

7 MR. PINILIS: Good morning, your Honor.

8 Billy Pinilis for the Galleguillos objectors, along  
9 with Scott Bursor and Alan Plutzik.

10 MR. PLUTZIK: Good morning, your Honor.

11 Alan Plutzik, I am also appearing today on behalf  
12 of the counsel who are applying for fees in connection with  
13 the Ayaad versus Sprint, Robertson versus Nextel, Molfetas  
14 and Lee actions.

15 MR. COVIELLO: Anthony Coviello, local counsel for  
16 objector, Jessica Hall.

17 MR. WEINSTEIN: Your Honor, Jeff Weinstein on  
18 behalf of Sandra and Kenneth Griffin, objectors.

19 MR. DE PALMA: Good morning, your Honor.

20 Joseph DePalma, on behalf of Lite, DePalma,  
21 Greenberg & Rivas in connection with the fee application.

22 MR. CONNOLLY: Good morning, your Honor.

23 William Connolly, counsel for defendant, AT&T.

24 THE COURT: Now, just so you understand, when you  
25 get up to speak, remind me who it is that you represent

1 again. I think I have it, but just remind me of that.

2 As I see it, Mr. Weinstein, you are the only new  
3 objector that is here. We received other objections, but  
4 the only one that is here represented by counsel is you, so  
5 I intend to take you first when we get to the objectors.

6 MR. WEINSTEIN: Thank you, your Honor.

7 THE COURT: All right.

8 For the other objectors and the attorneys who are  
9 here, I will tell you the following:

10 I have the transcripts from the last hearing. In  
11 fact, I have them with me.

12 I have your arguments that were made in connection  
13 with today's hearing, some of which are identical to what  
14 was made before. It is not my intent or desire to rehash  
15 everything that already has been said. You protected the  
16 record. I have your arguments. I will incorporate it into  
17 my final opinion in this matter.

18 I do not intend this to be another four-day  
19 hearing. It is not necessary. We have already talked about  
20 it, and the Court is well aware of everybody's positions  
21 with regard to everything.

22 To the extent you have something new to say,  
23 certainly with regard to the notice, I guess, we can have a  
24 conversation about that. But to the extent that you have  
25 objections to the reasonableness or the attorneys' fees or

1       whatever else it may be, that has already been argued, and  
2       we don't need to argue that again. I think that is for  
3       everybody's benefit.

4                  By way of background, this is a class action  
5       involving a claim by plaintiff that the early termination  
6       fees that have been referred to throughout the history of  
7       this case as the ETFs charged by Sprint violate, among other  
8       things, the Federal Communications Act and the State  
9       Consumer Protection Laws.

10                 The plaintiff, Judy Larson, is a citizen of  
11       Washington, whose subscriber agreement with Sprint contained  
12       an ETF provision and who apparently was charged an ETF.

13                 This matter was filed in this court and then  
14       underwent several days of mediation with Retired Federal  
15       Judge Nicholas H. Politan, and that culminated into a  
16       proposed settlement agreement on December 8th, 2008.

17       I preliminarily certified the class.

18                 Thereafter, I entered a preliminary approval order.  
19       At that time I set forth a schedule addressing the final  
20       approval process, and the time line culminated in a four-day  
21       hearing before this Court that started on March 12th, 2009  
22       and ended on March 17th, 2009. During these four days the  
23       Court addressed numerous objections and heard testimony from  
24       at least two expert witnesses that I recall.

25       I thereafter ruled that the publication component

1       of the initial notice plan complied with Rule 23(c)(2), but  
2       that the individual notice component of the initial notice  
3       plan did not. A proposed amended notice plan was then  
4       submitted on May 21st, 2009, which I approved on June 2nd,  
5       2009.

6                  Presently before the Court is the scheduled hearing  
7       in the parties' joint application for final approval of the  
8       class settlement.

9                  That pretty much sets forth the background of what  
10      has transpired here. Obviously, I will set it forth in more  
11      detail in my ultimate opinion in this case.

12                 So having said that, Mr. Cecchi, I guess we will  
13      hear from you first, and then we will hear from Sprint, and  
14      then we will hear from Mr. Weinstein.

15                 Is it Weinstein or Weinstein?

16                 MR. WEINSTEIN: It's Weinstein, your Honor.

17                 Thank you, Judge.

18                 MR. CECCHI: Thank you, Judge.

19                 Since we last appeared before your Honor, there has  
20      only been a limited number of items which I would like to  
21      address to your Honor, which I would consider to be new and  
22      not previously covered in the extensive and thorough  
23      examination and inquiry that we had the last time.

24                 The first is that your Honor issued a thorough,  
25      thoughtful, detailed, extensive opinion concerning the

1 notice and publication component.

2 We then, Sprint, and the class counsel, submitted  
3 an amended notice plan after there was an extensive interim  
4 motion practice, which your Honor is aware of, motion for  
5 reconsideration, opposition, motion by the Bursor group to  
6 basically vacate all of your Honor's previous orders and  
7 writ of mandamus to the Third Circuit, which was denied.

8 Following that litigation, we submitted an amended  
9 notice plan on notice to everybody. Your Honor considered  
10 the amended notice plan and issued an order, which Sprint  
11 and class counsel diligently and faithfully carried out.  
12 The amended notice went out to the class. The amended bill  
13 insert went out to the class, a direct mail piece went out  
14 to the Robertson class and the other individuals identified  
15 by Sprint, so that has changed. We carried out your Honor's  
16 order diligently and faithfully.

17 The other piece that has changed since the last  
18 time is your Honor has considered and granted final approval  
19 to a factually legally identical case in the case of  
20 T Mobile. That was a case where the Bursor and Plutzik  
21 group did not object to the consideration paid by the  
22 defendant, did not object at all, but sought attorneys' fees  
23 in that case.

24 Your Honor issued a thorough and detailed and  
25 thoughtful opinion in that case, which granted final

1 approval and also set the framework for an analysis, we  
2 believe appropriately, for the consideration of attorneys'  
3 fees, so that, too, has changed.

4 And all of those factors, those two points, simply  
5 buttress all of the arguments, which we made before, which I  
6 will not repeat, as your Honor directed us not to do, and I  
7 don't think it is necessary, because we're all familiar with  
8 it. We have all seen this before. We have all read the  
9 script, and we know the objections that were raised before,  
10 which your Honor overruled.

11 So when we get back down to the basics here, we  
12 have a robust and appropriate settlement of this case. We  
13 think it is fair. It compares to the other cases which your  
14 Honor is aware of, the Verizon case and the T Mobile case,  
15 and it compares favorably given what we consider to be the  
16 defense verdict in Ayyad, which in our judgment diminished  
17 the value of these cases. And they will take a different  
18 position, and your Honor knows those arguments. The point  
19 being that it's fair, it's reasonable, it's adequate under  
20 any benchmark, all of which your Honor knows about, and  
21 therefore, this settlement, as T Mobile and as Verizon  
22 should receive your Honor's blessing and final approval.

23 The final point I would make, Judge, is that we've  
24 got objectors before your Honor, all of whom seek legal  
25 fees. Different concepts and different analyses should be

1 applied in our judgment to those objectors.

2 There are objectors who made objections the last  
3 time who are no longer before your Honor seeking to dissolve  
4 the common fund. I point to Mr. Strange, Strange &  
5 Carpenter, made an objection, and they have withdrawn that  
6 objection.

7 The common fund doctrine, as your Honor knows, we  
8 cited it to your Honor, says that lawyers who preserve or  
9 create a common fund for the benefit of others in equity  
10 should be entitled to recover from that same common fund.

11 The converse is also true, your Honor, that lawyers  
12 who seek to destroy and dissolve the common fund cannot in  
13 good conscience and under the law and factually with a  
14 straight face come to your Honor and say, "Judge, it is the  
15 worst settlement ever. It's a charade. It's a joke,  
16 dissolve the common fund, let's go on with our litigation,  
17 but still pay us for causing all of the consternation we  
18 have done, so dissolve the fund and give us our fees."

19 Of course, in the T Mobile case, where your Honor  
20 applied Cendant in a detailed and thoughtful way, T Mobile  
21 framework, the very same lawyers who object here, who seek  
22 to dissolve the fund seek to be paid and were paid in that  
23 case, but nevertheless appealed, but we think the impediment  
24 is the --

25 THE COURT: Well, what if the lawyer's argument and

1       efforts lead to, for example, as may have happened in this  
2       case, to the Court considering part of the process and  
3       saying, hey, you know this wasn't right, you have to  
4       contribute something at that point --

5                    MR. CECCHI: I think that that's --

6                    THE COURT: -- that is not destroying the fund, but  
7       it's trying to add to the fund --

8                    MR. CECCHI: -- I think your Honor is on to the  
9       second tier of the objector analysis, which is you start  
10      with the proposition that ordinarily an objector is not  
11      entitled to fees.

12                  However, if the lawyer raises an objection that  
13      substantially benefits the class, your Honor has discretion  
14      to give them a fee.

15                  We don't quarrel with that. We also don't quarrel  
16      with the notion, Judge, here that what occurred in terms of  
17      the bill insert and the direct mail piece to Robertson is a  
18      benefit. We set that forth in our brief.

19                  The question is: How do you quantify that benefit.  
20                  They agree with us that it is exceedingly difficult  
21      to quantify, indeed impossible. I think it is on page 11 of  
22      Mr. Burson's brief. I think it is impossible to actually  
23      quantify it.

24                  So if your Honor got over the intellectual hurdle,  
25      and I think it is a conceptional and intellectual hurdle

1       that is indeed hard to breach or hard to get over, that you  
2       can simultaneously seek to destroy the fund, but recover  
3       from it, because I think that is the principal impediment to  
4       the Bursor group, and I just want to put a footnote on that,  
5       Judge, that there are other lawyers --

6                   THE COURT: Excuse me a second.

7                   Go ahead.

8                   MR. CECCHI: -- I think the footnote on the common  
9       fund impediment would be there are other lawyers who will  
10      address your Honor, who stand slightly different than Mr.  
11      Bursor. Mr. Plutzik, of course, right? That will be, and I  
12      will let him speak for himself, that will be Mr. DePalma. I  
13      think he will be differently situated than them because he  
14      is no longer sitting over here objecting where he was  
15      before.

16                  He is sitting back there, so I think the common  
17       fund doctrine prevents you from getting to the substantial  
18       benefit doctrine.

19                  But if your Honor did, in all candor, I think there  
20      is a benefit that inured to the class by virtue of the bill  
21      notice and the mailing. There absolutely is. So the  
22      question then would become if we get to that analysis, which  
23      again you know my argument was why the common fund prevents  
24      you, what is it worth.

25                  They didn't give you any coherent analysis as to

1 how you can quantify or value that benefit.

2 We gave you a number of different methodologies  
3 that we think fairly capture the value, and there are a  
4 number of precedents in this area that are particularly  
5 interesting,

6 The Home Stores case we sent to your Honor, where  
7 the enhanced notice that went out to the class in a massive  
8 securities case out on the West Coast was much more  
9 important than what happened.

10 In Home Stores the court concluded that but for the  
11 enhanced notice or new notice, the class wouldn't have been  
12 able to claim at all. There wouldn't have been any claims  
13 because the notice wouldn't have gotten to the class until  
14 after the claim period ended. In that case the court  
15 awarded the objector \$8900.

16 What that illustrates is that there is a broad  
17 range of discretion available to your Honor, and we have  
18 given you the range.

19 One theory or one approach that I think would be  
20 entirely appropriate is to look at what they objected to and  
21 what they achieved. They threw a lot of stuff at the wall,  
22 most of which your Honor rejected.

23 By my calculations, ten percent of their objections  
24 were sustained and 90 percent were not, so they have a  
25 lodestar on the objections of \$750,000. Ten percent of that

1       would be an approximation of the value of the benefit that  
2       your Honor sustained. They can't get credit for all of the  
3       objections that they raised the last time, which your Honor  
4       rejected in the opinion. That obviously didn't benefit the  
5       class.

6                     So the other analysis, which is in my brief, is  
7       based upon the value by doing a calculation from the claims  
8       that came in since the notice, but the footnote there, and  
9       they admit this, is we just don't know exactly what number  
10      of those claims is attributable to what they did and the  
11      original notice, because the claim period was open. Claims  
12      were coming in anyway, and the claims would have come in for  
13      another 60 days irrespective of what happened, so we don't  
14      know where it ultimately would have ended up.

15                  But if you give them credit for 25 percent of all  
16      of the claims that came in, you get to a fee of about  
17      \$250,000. So if you got the Home Store range on the low  
18      end, and you have the high end, which we have given you, we  
19      all agree, your Honor has discretion, and you are in the  
20      best position to judge. You saw it. You know what  
21      happened. You are in the best position to apply your  
22      Honor's discretion and say this what I think is fair.

23                  Of course, again, I note, I have my common benefit  
24      argument, which says these guys because they want to destroy  
25      the fund in the first instance are not preserving or

1 creating anything, so they can't then with the same face  
2 come to your Honor and say, well, destroy that anyway.

3 As to the value of the -- I call it the T Mobile  
4 framework, because that is also another issue before your  
5 Honor today, what is the value of the pre-appointment work  
6 that the Bursor group, the Plutzik group performed.

7 The big picture point that I want to make, and I  
8 know your Honor is aware of it, we did not settle their  
9 case. This is not exactly T Mobile. In T Mobile, of  
10 course, they had a case in California, which was released as  
11 part of the T Mobile case, and we presented your Honor with  
12 an analysis which was about 16 percent of the national  
13 class.

14 Here, and it amazes me to this day, we did not  
15 settle their case. We intentionally carved their case out  
16 of our settlement, so they are free to litigate Ayyad  
17 forever, and I hope they win. I hope they recover for that  
18 class as much as they can, and I hope they get paid as much  
19 as they can, but that big picture has to be filtered into  
20 your Honor's analysis as to what is appropriate here.

21 We did not settle their big case. We intentionally  
22 left it to them, but yet, they come before your Honor and  
23 they throw all of the infectum that they do at us throughout  
24 this proceeding even though we left them their case

25 So what are the other cases worth?

1                   I gave your Honor our judgment as to whether those  
2 cases under the T Mobile framework benefited the class.

3                   Our judgment is they did not. Molfetas, that is  
4 the case in Florida that was dormant, nothing of moment  
5 occurred in that case. The Lee case was filed after our  
6 appointment in this case. It was solely filed as a  
7 procedural tactic.

8                   The only thing that ever happened was some dispute  
9 over Mr. Bursor's pro hac vice status, and then it was  
10 stayed because your Honor preliminarily approved this  
11 settlement. Nothing of value occurred in Lee.

12                  Ayyad, I think a fair application of the T Mobile  
13 framework says you don't get paid for Ayyad. Mr. Plutzik,  
14 Mr. Bursor can get paid for Ayyad in California.

15                  They can't come here and say, "I want to be paid  
16 for Ayyad."

17                  It is not part of this case. It's not released.  
18 Cendant and T Mobile prevent them from being paid in Ayyad.  
19 If anything, Ayyad diminished the settlement value of this  
20 case. It's clear, Mr. Suprenant and Mr. Boyle will speak to  
21 that, but Ayyad is in California. Let them be paid there.

22                  Can they be paid?

23                  Is there a benefit that accrued to the class for  
24 the consequence of the work they performed in the subscriber  
25 portion of their case in California?

1 Now, remember, Ayyad was split into two cases, the  
2 payer case, i.e., the people who came out of pocket and paid  
3 ETFs and the subscribers who did not, who were current  
4 Sprint subscribers.

5 There is a quantum, Judge, that we would submit can  
6 be -- you could make a logical argument that there is a  
7 benefit that accrued to this case because we swallowed up  
8 the California subscribers, right?

9 Our brief tries to come up with the framework there  
10 as well, and what we believe is appropriate is, you know,  
11 let's look at how the subscribers are treated here, let's  
12 look at how Mr. Burson was treated in Verizon, where he  
13 didn't get a dollar recovery, and they get dollar recovery  
14 here, and we did an analysis based upon the number of  
15 subscribers in California that they had a representation of.

16 So we posited that formula and we also said you  
17 could make a logical argument that they worked on that case,  
18 it is released, and under T Mobile they should be paid.

19 It is hard for me to say that given everything else  
20 that they say to try to destroy our settlement, but  
21 nonetheless, T Mobile applied fairly I think would justify a  
22 quantum that we outlined for the subscriber portion.

23 Beyond that, Judge, I don't have anything further.

24 THE COURT: Well, one thing.

25 Mr. Griffin's objections raise some new things. Do

1       you want to address them now, or do you want to address them  
2       after Mr. Weinstein sets forth his objection?

3                   MR. CECCHI: I think I would prefer to address them  
4       after Mr. Weinstein, if that would be acceptable to the  
5       Court. I just want to look at my notes on Griffin. If it  
6       would --

7                   THE COURT: He takes issue with the definition of a  
8       class, for example, which is new, and takes issue with  
9       reasonableness also, but that is kind of interrelated with  
10      the definition of the class, I think.

11                  MR. CECCHI: Right.

12                  I think he's -- on the definition of the class, the  
13      Griffin objector is confusing nouns and verbs. He talks  
14      about how a class can't be ascertainable if you are defining  
15      it by reference to people's subjective mind sets, and that's  
16      not what our class definition is directed to.

17                  What it says is: If your claim, not if you claim,  
18      if your claim, i.e., what you have actually claimed in your  
19      pleading is related to an ETF, that is part of the class, so  
20      it is the difference between nouns and verbs as opposed to  
21      subjective intent, which is clearly not what we were  
22      capturing, and I don't think the class definition does.

23                  Griffin I think also, and I didn't mention this,  
24      and we had some colloquy the last time about it, he objects  
25      to the quote, unquote, unreasonable of the cypres provision,

1 which your Honor noted in your opinion.

2                   There is a very fundamental point that I wish to  
3 make --

4                   THE COURT: I guess the cypres, too, has been  
5 amended somewhat since our last hearing --

6                   MR. CECCHI: I would, hum --

7                   THE COURT: -- I think, if I remember correctly, I  
8 did a lot of reading in this case, but I know there was a  
9 new proposal with regard to cypres, which basically said  
10 either, you know, give them three minutes to a charitable  
11 organization like the military or whatever it was, or to be  
12 determined as the Court deems appropriate, except that it is  
13 not meant to be a reversion to defendant --

14                  MR. CECCHI: Right.

15                  The comment that I would make in reference then,  
16 Judge, is as follows, and I think the first point I make is  
17 important.

18                  There was never ever an objection filed prior to  
19 the hearing by Mr. Bursor or anybody else to that provision  
20 of the settlement agreement.

21                  THE COURT: Except the Court still had discretion  
22 to take you to task on that, and I did. I had a little  
23 problem with it and I said so.

24                  MR. CECCHI: Right.

25                  The point from our perspective was when it was

1           raised on the third day, we said to your Honor, our intent  
2           was never to have a reverter. Sprint said that the intent  
3           was, we believed, that it was a cypress provision and that an  
4           appropriate exercise or fulfillment of the cypress would be  
5           for guys overseas in the military.

6                 Now, we have been criticized for that, and the  
7           point I want to make about it is, we didn't intend a single  
8           dollar would ever go back to Sprint ever. I said that then  
9           unprepared because that was always my understanding and  
10           Sprint's understanding. It wasn't supposed to be cash going  
11           back to them. If we didn't articulate it clearly in the  
12           settlement agreement, I think your Honor appropriately  
13           pointed it out. The idea was cypress under your Honor's  
14           discretion, and our stipulation which your Honor has noted  
15           says it unequivocally, it's not a reverter.

16                 Judge, we discussed it in the mediation. There is  
17           not a reverter. It's not a reverter.

18                 The change I think would be what would be that, if  
19           the military is not a good exercise of our discretion here,  
20           both sides are happy to have whatever cypress remedy your  
21           Honor thinks is appropriate, whatever charitable  
22           organization is appropriate. We are happy to use those  
23           dollars in consultation with everybody in that manner.

24                 What I think that says to the Court and what I  
25           repeatedly tried to say to the objectors is: It is not a

1 reverter. We didn't agree to a reverter, and never would  
2 have agreed to a reverter, and Mr. Griffin goes after or  
3 attacks that provision as well.

4 I hope our stipulation is clear. We did wish to  
5 address your Honor's comment in your opinion, which  
6 obviously appropriately addressed the issue that was raised,  
7 but we think at this point it is a bogeyman, as we described  
8 in our brief. It doesn't exist.

9 THE COURT: All right.

10 MR. CECCHI: Thank you, Judge.

11 THE COURT: I will hear from Sprint's counsel.

12 Mr. Boyle?

13 MR. BOYLE: Good morning.

14 Joe Boyle from the law firm of Kelley, Drye &  
15 Warren on behalf of the Sprint defendants.

16 Your Honor, I am going to have some brief remarks  
17 and confine myself to the notice issue.

18 Mr. Suprenant is going to address the  
19 reasonableness of the settlement.

20 Your Honor, I think what is important here, and it  
21 dovetails a little bit with Mr. Cecchi's remarks about the  
22 Bursor group seeking to claim funds because they enhanced  
23 the notice and then presumably enhanced the take rate as a  
24 result, so I think with that framework in mind, it is  
25 important to look at the events as they unfolded.

1                   Your Honor ordered that we supply an amended notice  
2                   plan. Class counsel and Sprint did that. We filed it on  
3                   ECF. It was served on Mr. Bursor, and it was served on the  
4                   Hall objectors, and it was served on Mr. Strange.

5                   At that point in time Mr. Hilsee was in tow.  
6                   Everybody was on board. They could have taken a look at it.  
7                   They could have said, hey, you know, this still doesn't get  
8                   it done, and here are the reasons why.

9                   If your Honor had gotten those considerations  
10                  before your Honor, I don't think they have any merit, but at  
11                  least your Honor would have considered them prior to the  
12                  time of approving the amended notice plan.

13                  We think the law of the case likely bars them from  
14                  raising it now, but to the extent the Court has a fiduciary  
15                  obligation to require notice, we understand --

16                  THE COURT: If you think about it, though, even  
17                  though we had a prior fairness hearing, I am just thinking  
18                  procedurally, and I thought about that, but procedurally it  
19                  is really a brand new fairness hearing, right, to which  
20                  there was a new notice issued. So therefore, to the  
21                  extent -- well, what makes Mr. Bursor and their group  
22                  different is that they were aware of what happened with the  
23                  last notice, they were aware of the changes I intended to  
24                  make, and they had an opportunity to challenge it at that  
25                  point, and they didn't, but I don't know if that

1 procedurally necessarily forecloses them from making some  
2 arguments about it today.

3 MR. BOYLE: I understand that, your Honor, although  
4 I do think it goes to the credibility of those arguments.

5 THE COURT: Right. It may go to weight as opposed  
6 to admissibility.

7 MR. BOYLE: The only point I wanted to make, your  
8 Honor.

9 And with respect to publication notice, your Honor,  
10 obviously your Honor considered at the initial fairness  
11 hearing an extensive presentation of evidence and argument  
12 on that point, and after reconsideration determined  
13 publication notice was Rule 23 compliant, so we are not  
14 going to argue that again, and I don't think that there is  
15 any reason to entertain argument on it again.

16 Other than Mr. Hilsee's affidavit, the second  
17 affidavit that has been submitted here, I don't think there  
18 has been much dedication to that issue, and we obviously  
19 rest on our submissions that were accepted by the Court  
20 and the previous testimony of Mr. Vasquez and the arguments  
21 against it, that were rejected by the Court, so that really  
22 leaves us to mail notice.

23 Again, the focus of the mail notice with respect to  
24 the issue of reasonable efforts to identify individual class  
25 members was really the Rice declaration and to a lesser

1 extent Mr. Dupon's certification.

2 As we sit here today, your Honor, nothing in the  
3 Rice declaration has been rebutted by any competent  
4 evidence. Not a single word he said has been rebutted.  
5 Nobody has taken him on, on the underlying facts of what he  
6 said about the effort that it would take. There is no  
7 expert who went in and looked at Sprint's data environment  
8 and said, he is wrong, you could do X.

9 You don't have that, your Honor, so Mr. Rice's  
10 declaration stands before you as completely unrebutted. And  
11 I believe as a factual matter, your Honor has the record  
12 that your Honor needs to confirm what your Honor found when  
13 you found the amended notice plan to be appropriate.

14 What the Rice declaration and the Dupon submission  
15 confirmed, your Honor, is the difficulty that would be  
16 encountered in attempting to create a partial class list or  
17 a class list, and we submitted that. Your Honor looked at  
18 it. Your Honor determined that is correct. We don't need  
19 to pour over those records to try to find it.

20 Really the only contention that is not just a  
21 previous statement or an argument unsupported by the  
22 evidence about the facts of Mr. Rice's declaration is Mr.  
23 Bursor's contention that we needed to give your Honor a  
24 numeric statement of what the anticipated results of each of  
25 those endeavors would be, but there is no case law that says

1       that. There is case law that does have anticipated results,  
2       and there's case law that doesn't. For example, Carlo  
3       doesn't have any anticipated results.

4           But your Honor noticed in your opinion and the  
5       Nissan court has noted that it is a pragmatic test, and  
6       there is no formula.

7           So the notion there has to be some, you know, a  
8       numeric statement of anticipated results does not find  
9       support in the law. Obviously your Honor knew at the time  
10      based upon the four days of preliminary approval hearing and  
11      from all of the submissions in this case, that the class was  
12      numbered in the millions, and that if Sprint was going to  
13      undertake these efforts, lists containing millions of people  
14      would likely be found.

15           Sprint could not give you an idea of what that  
16      number would be, nor can Mr. Bursor, which, your Honor, I  
17      would note, we moved to strike Mr. Bursor's supplemental  
18      declaration and Mr. Weir's declaration as late and also  
19      unhelpful to the Court.

20           But what was interesting in Mr. Bursor's  
21      declaration is that he waived around the number 9.2 million  
22      with great vehemence in his brief, and then apparently when  
23      he hired an expert to actually look at it, he knocked that  
24      number more than in half, down to 4.1 million just like  
25      that. What that shows you is they don't have any idea what

1           they are talking about, and it's pure guess work.

2           What they did was they searched the collectibility  
3       analysis done by an algorithm from our general ledger. It  
4       doesn't -- it's not an analysis of class members, so it is  
5       not going to give you a notion of how many class members  
6       might have been identified if this endeavor was undertaken,  
7       but nobody doubts that number would be large. Your Honor  
8       knew that the number would be large when you considered the  
9       submissions.

10          So the only real argument that they have, the  
11       anticipated results argument, it's bogus. It's not  
12       supported, and it doesn't have to be numeric, and your Honor  
13       had before you when you considered it, the notion that the  
14       endeavor would produce a large list.

15          So we think that, you know, the rest of the Bursor  
16       objections on this, for example, the challenges to Mr.  
17       Rice's credibility, one is, you know, it wasn't done in  
18       conformance with the rules of evidence. The case law makes  
19       it clear that rules of evidence don't apply strictly in a  
20       fairness hearing, and Mr. Bursor hasn't cited a case that  
21       says they do.

22          Then he says, well, Sprint is able to identify  
23       customers, you know, to bill them the ETF or to settle the  
24       debt, but he still disregards the fundamental premise, which  
25       I think your Honor noted in March, what was clearly part of

1       Mr. Rice's declaration is we -- certainly we can charge the  
2       ETF, but we don't sort customers that way. We don't keep  
3       track of them by ETF charges, so every one of the examples  
4       that Mr. Bursor gives is just a restatement of the same  
5       problem, the same problem that we came to you originally,  
6       the same problem identified by Mr. Rice, and nothing Mr.  
7       Bursor has done through his legal arguments and his lack of  
8       expert testimony and lack of factual foundation changes any  
9       of that.

10           Again, I close on this notion, your Honor, the Rice  
11       declaration stands unrebutted. Today it is unrebutted. As  
12       a result, you are in exactly the same position factually as  
13       you were the day you approved the amended notice plan, and  
14       there is simply no reason to change that decision.

15           Thank you, your Honor.

16           THE COURT: Thank you.

17           MR. SUPRENANT: Good morning.

18           THE COURT: I see you had your exhibits delivered.

19           MR. SUPRENANT: I did, your Honor. I'm sorry for  
20       the delay.

21           Dominic Suprenant, Quinn Emmanuel for Sprint.

22           Your Honor will recall that in March I addressed  
23       the issue of the adequacy and fairness of the settlement,  
24       and I responded to the objections.

25           THE COURT: Yes, you did.

1                   And to the extent that you did, I know today is a  
2                   fairness hearing, so you have to make obviously a record as  
3                   to the fairness today again, but you don't have to be as  
4                   comprehensive as you were last time because a lot of the  
5                   arguments apply to what we did back in March, true?

6                   MR. SUPRENANT: Absolutely, your Honor. That was  
7                   the next thing I was going to say.

8                   THE COURT: Okay,

9                   It is my intent to finish this hearing today, so  
10                  take that into consideration, and go ahead and tell me  
11                  whatever you have to say.

12                  MR. SUPRENANT: It is my hope that we will finish.  
13                  I hope, I fervently hope we will finish today.

14                  What I was going to say, your Honor, is that in our  
15                  brief, we argued the Girsh factors, and I don't want to  
16                  repeat that argument.

17                  One of the primary drivers of that argument, your  
18                  Honor, was that the result in the Ayyad versus Sprint ETF  
19                  case powerfully confirmed the fairness and the adequacy of  
20                  the settlement.

21                  And Mr. Burson claims at page 31 of his objections,  
22                  that he actually was awarded - that's the verb he used -  
23                  over \$299 million, and potential recovery here he said is  
24                  1.2 billion, and therefore, it is woefully inadequate.

25                  Your Honor, I will be guided by your Honor because

1 I was going to address three points. I was going to address  
2 that point and show it is a fabrication. Plaintiff's loss  
3 in Ayyad, they have been litigating for six years. It is an  
4 endless hole that the class would never see --

5 THE COURT: Didn't we go through this last time  
6 extensively?

7 They think they want you to think they lost --

8 MR. SUPRENANT: Your Honor, I was going to address  
9 that. I was going address the Hall objection, and I was  
10 going to address the Griffin objection.

11 What I was going to inquire of the Court is I  
12 understand your Honor's desire for efficiency, and I  
13 actually thought it would be better --

14 THE COURT: I am not trying to curtail any new  
15 arguments, but to the extent it is the same thing, and we  
16 are going to argue about whether they were successful or not  
17 successful in Ayyad, and what that contributed towards the  
18 settlement and all of that, I have it, and that is old.

19 Right? That is nothing new.

20 Nothing has changed since the last time we were  
21 here, has it?

22 MR. SUPRENANT: Well, there has been some  
23 additional clarification from Judge Smith.

24 THE COURT: To that extent, I think people should  
25 now talk to me about that and how that changes anything, if

1 it does or not.

2 MR. SUPRENANT: Your Honor, just to cut it short,  
3 what I was going to propose to your Honor is rather than  
4 talk any more now, I think it might be more efficient to  
5 have the objectors speak to the extent your Honor allows  
6 them to, and then I will know what in your Honor's view I  
7 will need to respond to.

8 THE COURT: What I am going to do is I will let  
9 them talk about anything new that happened in Ayyad, and to  
10 the extent that that affects or should affect my reasoning  
11 in this case, I think in fairness to them that should be  
12 brought out.

13 To the extent that they are going to rehash  
14 everything that we already talked about regarding Ayyad the  
15 last time, I am not going to hear about it.

16 So we can do it your way, and we can wait to see  
17 what they say about that, but if you know there is something  
18 new, and you want to address it now, you can, too.

19 MR. SUPRENANT: Well, your Honor, one thing is, and  
20 I think my presentation is a little longer than 15 minutes,  
21 but I think that --

22 THE COURT: Then I don't want to prolong it. Go  
23 ahead.

24 (Laughter)

25 You're are on the clock. It's ten of eleven.

1 MR. SUPRENANT: There is a spectrum, your Honor,  
2 where it gets completely old and completely new.

3 What I was planning to address is somewhat in the  
4 middle, and I think what I would respectfully request of  
5 your Honor, I'll just stop now, and I'll see what your Honor  
6 allows them to say, and then I'll respond to that. I think  
7 that would be most efficient.

8 THE COURT: Fine. Go ahead.

9 MR. SUPRENANT: Thank you, your Honor.

10 THE COURT: All right.

11 We will hear from Mr. Weinstein or Mr. Weinstein,  
12 I'm sorry.

13 MR. WEINSTEIN: We are all related, Judge.

14 (Laughter)

15 May it please the Court --

16 THE COURT: Good morning.

17 MR. WEINSTEIN: -- good morning, your Honor.

18 Jeff Weinstein from Athens, Texas.

19 I appreciate your allowing me to speak on behalf of  
20 Kenneth and Sandra Griffin of Fruitville, Texas.

21 They are category one class members who were  
22 charged for and paid an ETF charge. Your Honor, I'm only  
23 going to discuss two of our objections today, but I can tell  
24 from how the Court has responded, that you certainly will  
25 entertain all of our written objections, and we appreciate

1           that.

2           THE COURT: I will.

3           MR. WEINSTEIN: The first objection is the class is  
4       not adequately defined, and before I explain why, I would  
5       like to point out to the Court that it is unclear what  
6       definition the parties are proposing.

7           The settlement agreement contains two different  
8       definitions, your Honor, one at page 19 in the definitions  
9       section, and one at pages 54 to 56 regarding their agreement  
10      to amend the complaint's class definition.

11           Note in any additional parentheticals in the second  
12      class definition, now, the notice did not contain the  
13      parenthetical definition, but oddly class counsel's brief  
14      filed just last week. Document 382, page 9, uses the  
15      parenthetical definition, not the definition in the notice,  
16      so we don't even know what definition class counsel are  
17      proposing today.

18           But most importantly, your Honor, the definition  
19      violates the Third Circuit decision of -- I'm going to botch  
20      it up, I apologize -- Chiang vs. Veneman, C-h-i-a-n-g versus  
21      V-e-n-e-m-a-n, and that is at 385 F.3d 256, 272 (3d Circuit)  
22      (2004).

23           THE COURT: The issue with the word "claim"?

24           MR. WEINSTEIN: The issue with the word "claim."  
25      That's exactly right, your Honor.

1                   THE COURT: Doesn't that relate to what a person  
2        claims in their --

3                   MR. WEINSTEIN: Your Honor --

4                   THE COURT: -- subjective issue in that case,  
5        right, as opposed to what the claim is, as opposed to, you  
6        know, the claim that is being submitted, which is more of an  
7        objective thing?

8                   MR. WEINSTEIN: -- your Honor, in this case the  
9        definition relates to the person, open quote, whose claims  
10      relate in any way to an early termination fee, period, close  
11      quote.

12                  That is the exact provision that the Third Circuit  
13      said is not allowed in the class definition, the exact  
14      verbiage.

15                  The second objection I wanted to discuss is the  
16      cypres component. There are two parts to our objection.

17                  First, there should not even be a cypres provision  
18      because any unclaimed money should be paid to class members  
19      who do make claims.

20                  Second, if there is a cypres, it should be in the  
21      full amount of the unclaimed money.

22                  The settlement provides that Sprint can donate  
23      calling cards in the amount of the unclaimed funds, but  
24      those credits cost Sprint less than the face value.  
25      Obviously cost Sprint less if the calling card has a dollar,

1 it costs them less than a dollar.

2 The amount of credit should be increased, so that  
3 Sprint's out-of-pocket expense for that donation is equal to  
4 the amount of the unclaimed funds.

5 And, again, your Honor, thank you very much for  
6 allowing me to be heard today.

7 THE COURT: I am actually typing what you are  
8 saying.

9 Just hang on a second.

10 I am a little confused about the cypres argument.  
11 You just said that the people who make claims should be  
12 allowed to get that fund.

13 MR. WEINSTEIN: Yes. Let me just --

14 THE COURT: I thought cypres was to the extent that  
15 there no claims were made, and there was money left over,  
16 that money would then go by way of the settlement --

17 MR. WEINSTEIN: -- what I am saying, your Honor, is  
18 obviously there are people who are going to make claims.  
19 Instead of having cypres, the money should just be  
20 proportionately paid --

21 THE COURT: Proportionately paid to those who do  
22 make the claim --

23 MR. WEINSTEIN: Absolutely.

24 The second point was about the value of the calling  
25 card.

1 THE COURT: That I understand.

2 Okay. Thank you.

3 MR. WEINSTEIN: Thank you very much, your Honor.

4 THE COURT: Thank you for coming all the way from  
5 Texas.

6 MR. WEINSTEIN: Thank you.

7 MR. CECCHI: Judge, can I briefly address the last  
8 point that Mr. Weinstein made as to the calling card issue,  
9 just very briefly?

10 THE COURT: Yes. Why don't you do that, and then I  
11 will hear from -- you were going to address the Griffin  
12 objections, you said before.

13 MR. SUPRENTANT: Yes, your Honor.

14 THE COURT: Now, I will hear from Mr. Cecchi and  
15 then at least we can get Mr. Weinstein back on the plane, if  
16 he wants to leave.

17 MR. CECCHI: I think Mr. Weinstein's --

18 THE COURT: Weinstein.

19 MR. CECCHI: -- Weinstein's last point was that if  
20 there is a delta between the dollars that went back to  
21 Sprint and the cost Sprint incurred in purchasing those  
22 cards, our position would be if at the end of the day we get  
23 to point where the Court and parties are comfortable with  
24 the military calling card proposal we made, it has always  
25 been my understanding, and we would be happy to -- we said

1       it before in the third day of hearing, it is dollar for  
2       dollar.

3                   So if Sprint got a dollar back, and it was your  
4       Honor's decision to use the calling card, then they can use  
5       the whole dollar, so it's the dollar that they get back  
6       would be used to purchase whatever that resulted in calling  
7       cards for the military.

8                   That is what I said before, the last time we were  
9       here, and we certainly agree with that now.

10                  The footnote again being that --

11                  THE COURT: What do you say about his proposal,  
12       that the money that's left over should be distributed  
13       proportionately to all members of the class?

14                  (Mr. Cecchi indicating)

15                  What kind of a legal argument is that?

16                  (Laughter.)

17                  I never heard that one before.

18                  MR. CECCHI: I don't know if we can put that on the  
19       transcript, but I think that is something that we would talk  
20       to your Honor about when we got there, that that would be,  
21       you know -- if as opposed to a cypress remedy, you know, we  
22       would have to think about it.

23                  THE COURT: It is certainly something I could think  
24       about.

25                  MR. BOYLE: Your Honor, if I could just make a

1 point on that --

2 THE COURT: I thought you would have an issue.

3 (Laughter)

4 MR. BOYLE: First of all, if you read the language  
5 in the cypres agreement in the settlement, there is no  
6 language that says Sprint makes a profit on this. Sprint  
7 doesn't even have a calling card business. They would have  
8 to buy them, so, you know --

9 THE COURT: So why do you care then --

10 MR. BOYLE: We don't care --

11 THE COURT: -- whether it goes into a calling card  
12 or it gets distributed proportionately to the members of the  
13 class?

14 MR. BOYLE: -- we don't care. That's the point.  
15 This is becoming some kind of a huge issue that doesn't  
16 exist --

17 THE COURT: It is not a huge issue.

18 MR. BOYLE: -- but with respect to redistributing  
19 to the class members, I think one of the things that's  
20 important to remember is at the time we negotiated the  
21 settlement agreement, at least it was my presumption, there  
22 wasn't going to be a lot whole lot of money left over. So  
23 to go back and spend all of that money, you know, to  
24 redistribute the money might eat up whatever was left over,  
25 so that's why we negotiated and came up with the cypres

1 because we thought it was the right thing to do.

2 That's all.

3 MR. CECCHI: Thinking about it, Judge, the problem  
4 potentially with that suggestion in just thinking about it,  
5 and Mr. Weinstein raised it, it could result in a situation  
6 where a class member received more than his actual damages,  
7 but it would have to be something that we would have to  
8 analyze and look at, right?

9 That would be my concept.

10 THE COURT: All right.

11 I don't consider this a main issue, but it is an  
12 issue to deal with.

13 I assume, too, Mr. Boyle, that to the extent that  
14 there is some administrative expenses associated with that,  
15 maybe, you know, from whatever the funds are that are left  
16 over, we can figure that out.

17 MR. BOYLE: Absolutely, your Honor.

18 That is why we said in the stipulation that  
19 obviously the Court has the final say on it in any event.

20 THE COURT: All right.

21 MR. SUPRENANT: Thank you, your Honor, again.

22 Griffin objects to the reasonableness of the  
23 settlement, and as your Honor pointed out, it really  
24 piggybacks on the claim that the class --

25 THE COURT: Defined --

1                   MR. SUPRENANT: -- and so since it is not  
2 ascertainable, you can't figure out if it is reasonable, and  
3 that is just wrong. He makes two arguments.

4                   One argument is --

5                   THE COURT: Excuse me a second.

6                   (Court and Clerk confer)

7                   Go ahead.

8                   MR. SUPRENANT: -- one argument he makes is that  
9 the definition of a class is too long, and he doesn't  
10 analyze it. He doesn't point out any ambiguity. He just  
11 has a word count. And we in our reasonableness brief, we  
12 cite, I think at Note 19, that our data indicates almost 90  
13 percent of the class can understand and read the notice and  
14 understand and read the class definition, so we think that  
15 the word count doesn't go anywhere.

16                  Then the second point he makes, which your Honor  
17 already has, is that the Chaing case uses "claim" as a verb  
18 to mean subjective intent and says you can't ascertain  
19 subjective intent.

20                  "Claim," as we use it, means a claim that you put  
21 forth in a complaint, which is obviously ascertainable.

22                  So I think those are the answers both to whether  
23 the class notice is sufficient, and they respond to the --  
24 to the reasonableness objections, and that's all I have on  
25 that, your Honor.

1 THE COURT: Thank you.

2 All right.

3 Now, do we have any lawyers here that are objectors  
4 now that have a time issue that they want to get back to  
5 wherever they came from and want to speak first?

6 Is there anybody that needs to be accommodated?

7 If not, then I will just take them in order.

8 Who wants to go first?

9 MR. BURSOR: Your Honor, I do.

10 THE COURT: Mr. Bursor.

11 MR. BURSOR: Yes.

12 May I?

13 THE COURT: You may.

14 MR. BURSOR: Thank you, your Honor.

15 THE COURT: Mr. Bursor, I am not inclined to make  
16 life difficult for you. I just want to narrow you to new  
17 arguments and new things, to the extent that something new  
18 has happened in Ayyad.

19 Look, you are a zealous representative of your  
20 position, and I have all of your briefs. I have the  
21 transcripts and what you said the last time here, and I even  
22 had my law clerk do a chart juxtaposing some of the  
23 arguments to what was said before in the transcript, and a  
24 lot of it is identical, so I don't want to go through that  
25 again. I am also trying to streamline the hearing, so I

1       would ask as a courtesy to the Court that you abide by that  
2       now when you make your presentation. Okay?

3                    MR. BURSOR: Thank you, your Honor.

4                    I will do my best.

5                    I also would like to finish this in a day because I  
6       have another obligation tomorrow, so I will try.

7                    I want to start out by moving to strike the  
8       declaration of Scott Rice under Federal Rule of Evidence  
9       601. He's not a common witness.

10                  602, he lacks personal knowledge.

11                  Rule 701 sets forth opinion testimony by a lay  
12       witness.

13                  Rule 702 sets forth expert testimony by a lay  
14       witness without qualification, lacking sufficient facts and  
15       data, and not the product of reliable principles and methods  
16       applied by the witness.

17                  802 is hearsay.

18                  We put these objections in our papers, your Honor,  
19       and the response that we got was -- we got two responses  
20       from Sprint.

21                  They didn't say he does have personal knowledge.

22                  They didn't even say that he actually talked to somebody who  
23       had personal knowledge.

24                  Your Honor, at pages five to seven of our brief, we  
25       have a three-page block quote of his deposition testimony,

1 where he said: I didn't talk to anybody at Amdocks. I  
2 don't know when the meeting was at Amdocks. I don't know  
3 who from our company talked to Amdocks, other than Nancy  
4 Roberts, maybe there were some other people. He didn't  
5 know, and he literally has zero personal knowledge for the  
6 matters set forth in his declaration, so we make that motion  
7 to strike.

8 I don't know how the Court will rule on that. I  
9 think it would be helpful going forward, you know, if we  
10 knew that because the arguments might branch in different  
11 directions.

12 But Sprint's response to that was two things:  
13 One, they said that we are estopped because we  
14 didn't raise the objections earlier when they submitted the  
15 Rice declaration with the amended notice plan, which was in  
16 late May, and then 12 days later, your Honor approved the  
17 amended notice plan. There was no motion to approve it.  
18 There was no --

19 THE COURT: Well, you were on notice, though.

20 MR. BURSOR: Pardon me?

21 THE COURT: You knew about it.

22 MR. BURSOR: I knew they submitted it, and we were  
23 looking at it.

24 It is difficult to -- it is an expert intensive  
25 type thing, so we knew you had it. We knew your Honor had

1 it.

2 THE COURT: And you knew what it was.

3 MR. BURSOR: I knew what it was. I read it.

4 THE COURT: Okay.

5 MR. BURSOR: Okay. And I didn't know if your Honor  
6 was going to issue a briefing schedule to say if anybody has  
7 a response to this, file it.

8 I didn't see a notice of motion that said, please  
9 take notice that this is the day your brief is due, so that  
10 I could --

11 THE COURT: Mr. Bursor, in the history of this  
12 case, that has never stopped you.

13 I could tell you that as of last night I got a  
14 declaration from Weir or whoever it was, and I got it  
15 yesterday, and that wasn't contemplated in my October 7th  
16 order either, so that has never stopped you from submitting  
17 papers to this Court.

18 In fact, there has been a plethora of objections  
19 and briefing done without me even requesting it, so I don't  
20 know that that would have stopped you from doing it.

21 MR. BURSOR: Well, there was 12 days, 12 days to  
22 respond to an expert, essentially an expert report, although  
23 the guy is not an expert. Mr. Rice doesn't have any  
24 personal knowledge.

25 So to say that we are estopped because between the

1       12 days they filed it and this Court approved it, we didn't  
2       file something in 12 days, I think is a stretch.

3                   So if that is going to be the grounds for  
4       overruling our objections, you know, I don't think that's  
5       fair.

6                   THE COURT: What do you say is the second part?  
7       You said to respond in two ways. One, that you were  
8       estopped, and what is the second thing?

9                   MR. BURSOR: The second thing I said was, and Mr.  
10      Boyle repeated it today, the Federal Rules of Evidence don't  
11      apply. That is the second argument. We don't have to  
12      comply with the Federal Rules of Evidence.

13                  They said Mr. Burson has cited no case that says  
14      the Federal Rules of Evidence don't apply.

15                  But, your Honor, Federal Rule of Evidence 101 -- I  
16      wanted to grab a copy, so I get it correct.

17                  Federal Rule of Evidence 101, quote: These rules  
18      govern proceedings in the courts of the United States and  
19      before the United States Bankruptcy Judges and United States  
20      Magistrate Judges, to the extent and with the exceptions  
21      stated in Rule 1101, and then Rule 1101 has a very long list  
22      of exceptions.

23                  But there is no exception for Rule 23, a fairness  
24      hearing. There is no exception that even remotely applies  
25      to the situation, so I think it is crystal clear that the

1       Federal Rules of Evidence do apply here, and I think if that  
2       was clear to your Honor on March 12th when your Honor  
3       applied the Federal Rules of Evidence to strike the  
4       testimony of Mr. Vasquez, the expert witness, that class  
5       counsel presented on March 12th, and your Honor struck it,  
6       the Federal Rules of Evidence were the basis for that, so  
7       the Federal Rules of Evidence do apply.

8                   Mr. Rice's declaration is undisputed that it does  
9       not comply with the Federal Rules of Evidence. It is not  
10      even close. It is fourth-hand hearsay at best. It should  
11      be stricken.

12                  There is an additional reason to strike it. The  
13      additional reason to strike Mr. Rice's declaration is that  
14      we have been denied the opportunity to cross-examine him on  
15      any of the matters set forth in his declaration, and it is  
16      not because we didn't take his deposition.

17                  We sent a lawyer to Kansas City in February to  
18      depose Mr. Rice. It was Mr. Fischer. He went there at my  
19      direction. And I know your Honor recalls you got a phone  
20      call during that deposition because there were about 25  
21      instructions not to answer during the one-hour deposition.  
22      But the testimony that Mr. Rice gave that day, and that is  
23      quoted at length in our objections at pages five to seven is  
24      I don't know anything about this. I didn't talk to anybody  
25      who knows anything about this. I didn't attend a meeting

1       about this. I don't know what year the meeting occurred  
2       about this.

3                   That is the deposition that we got.

4                   So Mr. Boyle comes to court today, and he says, you  
5       know, with grandiosity, the Rice declaration stands before  
6       you unrebutted.

7                   What opportunity did we have to rebut it?

8                   There was 12 days between when it was submitted and  
9       when it was approved.

10                  When we sent our guy out there to take his  
11       deposition, he said, I don't know anything.

12                  How do we -- what rebuttal can we possibly give?

13                  Mr. Boyle also says, there is no expert that has  
14       gone in to look at Sprint's data bases and put in an expert  
15       report saying there is a problem there.

16                  Well, that is true, because that's what we want to  
17       do, and we have not been given the ability to do that. And  
18       when we filed our objection, we said we would like to talk  
19       to the people at Amdocks. We don't want to hear what  
20       Amdocks told to Ms. Roberts, who told it to Mr. Boyle and  
21       wrote it on a piece of paper that was then signed by Mr.  
22       Rice who then came to the deposition and said I don't know  
23       anything about it.

24                  We would like to get real facts, because we think  
25       the Court deserves to have the facts on this critical issue.

1        Obviously it's the most hotly disputed issue in connection  
2        with this settlement, and the Court doesn't have any  
3        competent evidence on it from these folks.

4           Now, I don't know if your Honor is going to rule on  
5        the objection or not because I could fork my argument and  
6        streamline the argument, if the Rice declaration were  
7        stricken, I think I would have a much shorter argument.

8           So now we get to the issue of, okay, let's say  
9        Rice's declaration is not stricken, and the Court accepts  
10      his estimates. What do those estimates show?

11           And we put in our brief that it looks to us based  
12      on the figure Sprint reported that there were about 9.2  
13      million accounts that were charged ETFs that would be  
14      identified during the time period Mr. Rice described.

15           And it turns out Sprint came back and said, well,  
16      there might be a lot of business and Government accounts in  
17      there, and if they have a valid criticism of us, that we  
18      take note of it, and so we did.

19           So I asked Mr. Weir to check with the data base we  
20      had to see what proportion was Government and business  
21      accounts, and we reduced our numbers accordingly, and we  
22      revised our Table II that was in our objection, we revised  
23      that and submitted a revised version with my second  
24      supplemental declaration.

25           So what does that show?

1                   It shows that just going back to April of 2007,  
2                   which Mr. Rice said would cost a hundred-thousand dollars to  
3                   do, they would identify somewhere in the neighborhood of 4.2  
4                   million class members.

5                   Now, Sprint says, well, maybe there is some  
6                   problems with how Bursor calculated this number, okay,  
7                   but it is undisputed -- they don't dispute that there would  
8                   have been millions of class members identified through this  
9                   effort,

10                  At page 16 of their brief, Docket Entry 390, they  
11                  say, quote: A list containing millions of settlement class  
12                  members would result from the efforts set forth in the Rice  
13                  declaration.

14                  Not that it could result or might result, but that  
15                  it would result.

16                  THE COURT: Isn't that at the end of the day a  
17                  pragmatic analysis of what it would take to do that?

18                  MR. BURSOR: Yes.

19                  THE COURT: Okay.

20                  MR. BURSOR: Now, what kind of a pragmatic analysis  
21                  is that?

22                  Is it just free form, we do whatever we want, or is  
23                  there some legal precedent that guides us?

24                  I would submit there is a legal precedent that  
25                  guides us, and that is the Nissan case, which your Honor

1 cited in the order from April that sustained our objections.

2 And what Nissan says, 552 F.2d at 1099, quote:

3 In every case reasonableness is a function of  
4 anticipated results, costs, and amount involved, close  
5 quote.

6 Nissan didn't say in this case that is how you do  
7 it, or in some cases or in most cases. In every case it is  
8 a function of anticipated results, and what it would cost.

9 And Nissan also goes on to say that a search may  
10 have been omitted -- quote: A search may be omitted only if  
11 its cost will exceed the anticipated benefits.

12 Now, we have some data that tells us what are the  
13 costs and what are the benefits.

14 When your Honor issued an opinion on May 2nd  
15 approving the amended notice -- excuse me a moment, your  
16 Honor -- it was the June 2nd order.

17 So the June 2nd order is the one that approved the  
18 amended notice plans, Docket No. 344, and at page two is the  
19 entire discussion of this issue.

20 THE COURT: Okay.

21 MR. BURSOR: Quote: Additionally, the Court is  
22 satisfied upon examining the declaration of Scott Rice,  
23 Sprint's Vice President of Customer Billing Services, that  
24 it would be unreasonable to require Sprint to engage in  
25 further efforts to individually identify additional class

1 members. The time, cost and effort associated with pouring  
2 through and analyzing the various Sprint data bases are not  
3 reasonable, and the Court finds that individual notice as  
4 outlined above is sufficient to satisfy Rule 23, Thus, the  
5 new individual notice plan is approved in full.

6 Now, I can't remember the list of adjectives that  
7 Mr. Cecchi used about how thorough and thoughtful the  
8 analysis of this issue was, but what I have before me is one  
9 paragraph from this order. That was the entire analysis of  
10 this issue, and what is missing from the analysis is any  
11 discussion of the anticipated results, which Nissan says  
12 have to be considered in every case.

13 In order to make a reasonable analysis, there has  
14 to be a weighing of the costs and benefits. That is how one  
15 would do a pragmatic reasonable analysis.

16 Now, what are the costs?

17 I submit that the costs are trivial, and Mr. Weir  
18 has submitted a declaration, and he is in the courtroom  
19 today, and if necessary, we can call him to the stand,  
20 although I hope to abbreviate the proceedings here. In our  
21 view this could have been done in 15 minutes at a trivial  
22 cost.

23 What is in the record, unless it is stricken, is  
24 Mr. Rice's declaration saying it would cost a  
25 hundred-thousand dollars.

1           If it would cost a hundred-thousand dollars to  
2 identify millions of class members, and there is no dispute  
3 that this is a computerized search, there is no dispute that  
4 this is some kind of a crap shoot, maybe we will identify  
5 the class members, maybe we won't. That is not an issue.  
6 We will identify the class members. That's admitted.

7           There is no contention that the list is stale or  
8 that there is any problem with it. Nobody has to manually  
9 pour over punch cards or anything like that. This is  
10 pushing a button on a computer. If it costs a  
11 hundred-thousand dollars to do that, as Mr. Rice, you know,  
12 says, based on what somebody, who told somebody, who told  
13 somebody, who told him, if it costs that much, that is still  
14 pennies per class member. Even if that only identified a  
15 little over 4 million class members, which was the revised  
16 figure that we provided the Court, that is about 2.4 cents  
17 per class member.

18           What are the criteria by which that was determined  
19 to be an unreasonably large effort?

20           There is nothing in the June 2nd order from this  
21 Court that says that -- that identifies what the criteria  
22 were, that discusses the anticipated results at all. And  
23 so, your Honor, that is why, you know, we contend that even  
24 if the Court accepts the Rice declaration and does not  
25 strike it, the Court still has to go back and revisit this

1        reasonableness analysis because it was not done in  
2        connection with the June 2nd order.

3              The reason it was not done is because the parties  
4        did not provide the Court with the information that they had  
5        an obligation to provide to the Court and that Nissan said  
6        should be considered in every case. So now we got, you  
7        know, based on what Mr. Rice says, we know we can identify  
8        class members for about two cents per class member.

9              We looked at the language at the last hearing about  
10       how a large class requires a large effort and it makes a  
11       larger effort reasonable, et cetera.

12             So we went back and we looked at the Oppenheimer  
13       case from the Supreme Court, 437 U.S. 340. That was a case,  
14       your Honor, where the Court found that it would cost \$16,580  
15       in 1973 to identify 121,000 class members. It is 13.7 cents  
16       per class member in 1973 without adjusting for inflation.

17             If you adjust it for inflation, it is about 67  
18       cents per class member. It's about 27 times more than what  
19       it would cost here, and the Supreme Court said that is  
20       reasonable, and that must be done. And yet here when it  
21       cost only two cents per class member, the contention is we  
22       shouldn't do it at all.

23             Your Honor, I also reference the Court to the Third  
24       Circuit's decision in the Orthopedic Bone case, 246 F.3d at  
25       page 327, footnote 11.

1                   The Orthopedic Bone case was one where a class  
2 member came in late and tried to file a claim late, so it  
3 wasn't a fairness hearing. The class members shows up  
4 that --

5                   THE COURT: Was that case quoted in your briefs?

6                   MR. BURSOR: Yes.

7                   THE COURT: I don't remember it, but go ahead.

8                   It's footnote 11 that you are referring to?

9                   MR. BURSOR: Yeah. Page 327, footnote 11, and I  
10 can tell your Honor --

11                  THE COURT: That's okay. You can tell me. I will  
12 look it up anyway.

13                  MR. BURSOR: So a class member shows up late. He  
14 is tardy, and the parties say, Judge, disallow the claim  
15 because he is late, he got notice, and he didn't come in on  
16 time.

17                  The notice was a notice by publication only, so the  
18 Third Circuit said it is not really fair to penalize this  
19 class member because he didn't see a small advertisement  
20 that was on page 50 of a magazine he doesn't receive.  
21 That is not a very good notice, so we are not going to  
22 penalize him for being late, and we will allow his claim.

23                  Then they added a footnote, and the footnote says,  
24 and I'm paraphrasing, your Honor, but the footnote says: If  
25 this is a recurring issue that comes up in the District

1 Court, so we would be remiss if we did not express our  
2 concern and provide some guidance on what better practices  
3 are.

4 So now we have the Third Circuit saying, we are  
5 concerned about these publication notices, and we want to  
6 let the District Courts know what we think. Here are some  
7 better practices.

8 Then they quote from the class members' brief,  
9 where he said they could have done this, and they could have  
10 done that. They could have asked hospitals and doctors to  
11 identify patients that got orthopedic bones -- screws in the  
12 bones.

13 They could have sent out a general "Dear Doctor"  
14 letter, saying if you know any patients that got these  
15 orthopedic screws in their bones, please provide them to us,  
16 we want to give them individual notice.

17 They could have placed ads in orthopedic trade  
18 publications seeking people to identify these class members.

19 Then at the end of the footnote, the Third Circuit  
20 says: Some combination of these would have constituted a  
21 reasonable effort to identify class members.

22 So this is an indication. It is a guidance. It is  
23 not a holding. It is guidance from the Third Circuit on  
24 what they think is reasonable.

25 We can also look at Carlo, your Honor, where

1       efforts like those were made, where the parties didn't have  
2       a data base the way Sprint has. So the parties had to send  
3       out "Dear Doctor" letters or run advertisements, saying if  
4       you know people that might be class members, tell us, so we  
5       can send them an individual notice.

6                  That was done in Carlo, and the Third Circuit said,  
7       it should have been done in Orthopedic Bone.

8                  Yet, here, where they already have the names, and  
9       they could get them with the push of a button, they didn't  
10      send out the notices.

11                 Now, Mr. Boyle said that Carlo, Carlo is one of the  
12      cases where these ads were run to try to find class members  
13      and give them individual notice.

14                 I am sure the Court understands this, but I am  
15      talking not about an ad with the notice. I am talking about  
16      an ad designed to identify the people, so that they could be  
17      sent an individual notice.

18                 So Mr. Boyle says, there was no data provided to  
19      the Court in Carlo on what the anticipated results of that  
20      effort would be, how many class members would be identified,  
21      and that is correct.

22                 But how could they know, you know, how could they  
23      know the anticipated results of an effort like that because  
24      that is kind of attenuated, placing an ad and saying if you  
25      know people, let us know.

1                   So he is correct. There were no results there, but  
2                   the more important point, your Honor, is that in Carlo the  
3                   effort was made. They did it.

4                   And so when we go back to Nissan, and we say a  
5                   search may be omitted only if its costs will exceed the  
6                   anticipated benefits, they didn't omit the search in Carlo.  
7                   They did the search, and so they didn't have to present data  
8                   on the anticipated benefits of the search because they were  
9                   not omitting it. They were doing it.

10                  Your Honor, on the individual notice point, the  
11                  last thing I would like to say on that issue, and I will go  
12                  on to the other notice issues more briefly, is that we now  
13                  have some data to see what the effect was of actually giving  
14                  individual notice in this case because the first notice that  
15                  went out here that we objected to, and our objection was  
16                  sustained, had no individual notice whatsoever, and we asked  
17                  for discovery of the updated claims data, and we didn't get  
18                  it. But what we did get was some declarations from Mr.  
19                  Kareem that were submitted by class counsel providing a  
20                  little bit of the updated data.

21                  Your Honor, I just wanted to go get a chart that I  
22                  prepared from those data.

23                  THE COURT: What you did get was what, Mr. Kareem?

24                  MR. BURSOR: Pardon me?

25                  THE COURT: You said you asked for updated data,

1           but what you did get was what?

2           MR. BURSOR: Class counsel submitted a declaration  
3           from a fellow at Gelardi named Mr. Kareem -- what was his  
4           first name?

5           MR. CECCHI: It's Karen Carmen. It was a women.

6           MR. BURSOR: Oh, Karen Carmen. I'm sorry.

7           Okay. Ms. Carmen. I never met Ms. Carmen, so I  
8           was going by the name, your Honor.

9           THE COURT: All right.

10          MR. BURSOR: So we wanted reports like the reports  
11          we put in last time.

12          We didn't get that.

13          We got Ms. Carmen's declaration, and Ms. Carmen  
14          reported the number and amount of claims that came in during  
15          the first notice period, and the number and amount of claims  
16          that came in after the amended notice was done as a result  
17          of our initial objection, and I would like to present the  
18          Court with a summary of that, if I may.

19          THE COURT: Go ahead.

20          (Documents handed to the Court)

21          Do you have an extra copy for my law clerk?

22          MR. BURSOR: Yes.

23          THE COURT: I'll mark this as Bursor 1.

24          (Exhibit Bursor 1 marked.)

25          MR. BURSOR: Your Honor, there is some information

1       on here about fees. I will not focus on that now. I will  
2       talk about that later. I am only talking about the notice  
3       right now.

4                 The initial notice that went out with no individual  
5       notice at all and with just the publication, according to  
6       Ms. Carmen's declaration, paragraph 2, Docket Entry 404-2,  
7       that resulted in 12,100 in claim forms being filed, and  
8       19,105 lines, and the cash value of those claims was  
9       \$810,800, and if we hadn't come in here and objected, that  
10      would have been the end of it.

11                 There would have been no further notice, and there  
12      would have been a very, very small trickle of a few more  
13      claims while the claim period remained open.

14                 The reason I say a very, very small trickle is  
15      because with no notice, you get no claims.

16                 Now, according to the declaration of Ms. Carmen,  
17      that is at Docket Entry 384-4, since the second notice was  
18      issued as a result of our objection, there have been 44,808  
19      additional claims filed on an additional 66,913 lines, and  
20      the cash value of those claims is almost two and a half  
21      million dollars.

22                 Now, what does this tell us?

23                 Well, what it tells me is that the first notice was  
24      really bad because it was with a second notice that had no  
25      additional publication, and that was still defective for

1 many reasons that we outlined in our papers.

2 Make no mistake, the second notice was still a bad  
3 notice. It did not meet Rule 23's requirements. But even  
4 as bad as the second notice was, it produced 3.7 times the  
5 number of claims. That is how much more effective  
6 individual notice can be, and the individual notice only  
7 went out to about 200-some-thousand former customers.

8 248,000 roughly was the number I saw from the papers, and of  
9 course, you had the new bill insert that went out to the  
10 current customers, about 15 million of those.

11 So with the additional individual notice, as bad as  
12 it still was, we got almost four times the number of claims.

13 What that shows is that if you actually identify  
14 people, you make a reasonable effort to identify them, and  
15 you actually send them a notice that says something, not  
16 like that bill insert that we spent two days on at the last  
17 hearing, but an actual notice that has some information in  
18 it, all of a sudden, now you got 66,000 new claims. And so  
19 these class members, if they get notice, they will file  
20 claims.

21 And if the efforts described in the Rice  
22 declaration, which are conceded by everybody, that they  
23 would identify millions more of class members, if those  
24 efforts were undertaken, you would have hundreds of  
25 thousands of more claims.

1                   There's no doubt about it. I don't think anybody  
2 would dispute that or could dispute that.

3                   So, your Honor, we think that is further evidence  
4 of the inadequacy of the notice.

5                   Now, there are some other notice issues that we  
6 raised previously, some of which there is new information  
7 on. I will try to go through those as efficiently as  
8 possible.

9                   In the prior hearing, your Honor, we criticized the  
10 reach of the publication plan and the publication and what  
11 they called the mail notice plan combined.

12                  Since then we submitted a new declaration for Mr.  
13 Hilsee, who recalculated the reach based on the amended  
14 notice plan, found that the calculated reach is only 66  
15 percent, and with respect to the former customers, those who  
16 are due the lion's share of the settlement funds, as your  
17 Honor found in the order from April, the former customers  
18 who paid or were charged ETFs, the reach was less. It was  
19 approximately 50 percent, and it remains at that level after  
20 the amended notice plan. That is in Mr. Hilsee's affidavit.

21                  Your Honor, if I could -- we didn't know -- I was  
22 told by Mr. Boyle that there would be some objection or  
23 motion to strike the second affidavit, and so I asked Mr.  
24 Hilsee to come from Philadelphia today, who said he would be  
25 present to testify in case that was necessary to address

1 some objection.

2 I learned this morning that there will be no  
3 objection or motion to strike, and so if that is the case,  
4 then we will not need to put Mr. Hilsee on the stand.

5 MR. BOYLE: Your Honor, I object.

6 Mr. Bursor sent an email on Saturday that asked us  
7 to provide him with the grounds for any motion to strike,  
8 otherwise, Mr. Hilsee would not be here.

9 We did not provide him with those grounds. He  
10 brought Mr. Hilsee here on his own. The idea that I caused  
11 this man to come from Philadelphia needlessly is just an  
12 inaccurate statement.

13 I have the email, if your Honor would like to see  
14 it.

15 THE COURT: You can send Mr. Hilsee home.

16 MR. BURSOR: Okay.

17 Mr. Hilsee, thank you.

18 Your Honor, just to take care of the business while  
19 we are on it, I also brought Mr. Weir, who is prepared to  
20 testify today to the ease with which Sprint's data bases can  
21 be sorted.

22 There has been an objection. Mr. Boyle articulated  
23 an objection to Mr. Weir's testimony.

24 And so that I would have the opportunity to examine  
25 Mr. Weir to cure any perceived defect, he is here, and so if

1           the Court --

2           THE COURT: I have your declaration from Mr. Weir.  
3           I don't need to hear testimony on it. I will consider it,  
4           and I will accept or reject whatever parts I feel are  
5           necessary.

6           MR. BURSOR: Okay.

7           So then we can dispense with that thankfully, your  
8           Honor, and that was my hope, so I appreciate that.

9           Other new material concerning the contents of the  
10          notice, Mr. Hilsee reviewed the amended notice plan, and the  
11          new notice that was included there, and details the ways in  
12          which it, too, departs from the FJC models in the best  
13          projects described in the FJC model, so that is new  
14          evidence, and that is in the record in Mr. Hilsee's  
15          declaration.

16           The class definition, your Honor, we raised the  
17          same objection as the Griffin objectors did. I don't want  
18          to belabor that, but we said essentially the same thing,  
19          which is the Third Circuit in the Chaing case said you can't  
20          define a class by reference to, quote, claims.

21           Class counsel came back and they said, well, this  
22          "claims" is different because this "claims" is objective.  
23          It is not based on somebody's subjective state of mind.

24           The way class counsel expressed it in their brief,  
25          it was at page 20 of their brief on the notice.

1                   They said, quote: Whether someone is in the class  
2                   does not depend on their subjective state of mind, but upon  
3                   the objective content of the subject matter of the claim  
4                   they have asserted.

5                   So if we are to take class counsel's spin on this  
6                   claim language, whether you are a member of a class or not  
7                   depends on whether you've asserted the right kind of a  
8                   claim.

9                   Well, what if you have not asserted any claim,  
10                  which is 99.9 percent of the people covered in this -- that  
11                  they believe are covered in this class.

12                  If you are sitting at home, and you get this  
13                  notice, actually you'd see it on page 50 of the newspaper or  
14                  whatever, and you say, gee, I have an assertive claim, then  
15                  I am not in the class, according to Mr. Cecchi's brief.

16                  So the subjective objective twist on this doesn't  
17                  cure the Chaing problem or, you know, if they want to  
18                  redefine the class to include only those people who have  
19                  asserted such claims through some objective means, meaning  
20                  they filed a piece of paper with some court or filed a claim  
21                  somewhere else, or maybe it's just the claims that were  
22                  filed with Gilardi for this settlement, I don't know. I  
23                  don't know what it means, and I was litigating this case for  
24                  six years. I don't think Mr. Boyle or Mr. Cecchi knows what  
25                  it means.

1                  With all due respect, I don't think this Court has  
2                  any idea what this means, because I don't think it has any  
3                  meaning. It is a prohibited way to define a class under the  
4                  Third Circuit's law.

5                  Another new point on the content of the notice,  
6                  your Honor, is that your Honor made an order on our last  
7                  objection about the false information concerning the  
8                  Robertson class. What your Honor's order said is fix it,  
9                  and it was in a footnote.

10                 I am going to paraphrase it, your Honor, because I  
11                 am sure the Court remembers what it said, and you could find  
12                 it in the footnote of the ruling.

13                 The Court said: The Galleguillos objectors say  
14                 that there is false information about the status of the  
15                 Robertson class, because the information that was put on the  
16                 settlement website says that summary judgment was granted  
17                 against the Robertson class and in favor of Nextel.

18                 At the time that information was put on the  
19                 website, that ruling had been reversed. Summary judgment  
20                 had been denied. The exact opposite ruling had been  
21                 entered.

22                 So we came in in March, and we said, your Honor,  
23                 look at this.

24                 Your Honor said fix it.

25                 Well, they didn't fix it. They left the false

1 information on the website. It's there today -- well, I  
2 didn't check it today, but I checked it the day we filed the  
3 objection, and it was still there.

4 Why couldn't they fix that?

5 Well, when they say they faithfully and carefully  
6 applied your Honor's order, they didn't get that part.

7 We also made the argument, your Honor, that the  
8 notice provided false information on the Ayyad class. I  
9 think you heard that last time, but your Honor's order  
10 didn't address that. Well, the order --

11 THE COURT: Didn't address what?

12 MR. BURSOR: The argument that -- the parties put  
13 into this notice a statement that said there is no -- this  
14 notice does not mean to suggest that there has been any  
15 finding of any wrongdoing by Sprint in this case.

16 Now, of course, there has been a finding of  
17 wrongdoing by Sprint in the case that I tried, where we  
18 pre-claimed on every single claim we asserted in our  
19 complaint, and we were awarded a hundred percent of damages  
20 that we sought and a hundred percent of the injunctive  
21 relief, although there is some dispute about whether we won.

22 But to say in the notice, we are not trying to  
23 suggest that there has been a finding of any wrongdoing,  
24 when there had been a finding that Sprint had violated the  
25 law with this ETF. In the words of Mr. Hilsee, I think he

1 described it as essentially a lie, and it is.

2 There has been a finding of wrongdoing, so why they  
3 would put that into the notice is difficult to understand.

4 Your Honor, the notice is also defective because it  
5 provides false information about the reversion. This is in  
6 our brief.

7 They say the money is going to be distributed to  
8 class members, and it turns out no, the money is going to go  
9 back to Sprint -- a portion of the money is going to go back  
10 to Sprint.

11 Now, you have seen some --

12 THE COURT: Where do you get that from?

13 MR. BURSOR: I get from that page 23 of the  
14 settlement agreement that says if there is any cash in the  
15 fund, it will go back to Sprint.

16 I also get it from Mr. Suprenant's statement at the  
17 prior final approval hearing on day three, where he said, as  
18 I understand it: If there is money left in the fund, it is  
19 going to come back to us.

20 So I get it from the language of the agreement and  
21 from the words of Mr. Suprenant.

22 I can provide the citations to those, if you'd  
23 like.

24 MR. CECCHI: We would like him to because he didn't  
25 add the rest of the sentence, of course, and everything else

1           that was said about it.

2           THE COURT: Well, Mr. Cecchi, please.

3           Counsel, I will look it up.

4           Go ahead.

5           What else?

6           MR. BURSOR: Okay.

7           So when I was here in March, I said look at page  
8       23. It says the money goes back to Sprint.

9           Mr. Suprenant stands up and says, yeah, we get the  
10      money back.

11           Now, that is a real problem for the class because  
12      they don't get the money, but it is also a real problem for  
13      Mr. Cecchi and his group because if there was a  
14      6-million-plus-dollar reversion, in the agreement they  
15      settled, that they signed, it creates a lot of problems for  
16      him because it makes them look inadequate, makes it look  
17      like they made a mistake, makes it look like maybe they  
18      committed malpractice or made some kind of a gross error,  
19      where the \$6 million was going to go back to Sprint, and it  
20      make it look bad because they never told you about it. I  
21      did.

22           So what are they doing to do?

23           If they just come in, and they say, okay, we did  
24      this, it has been brought to our attention, we didn't  
25      realize it, or we made a mistake, we are going to fix it.

1                   If they did that, well, then they are just  
2                   supporting a fee application by my group in the event the  
3                   settlement is approved for recovering that \$6 million that  
4                   they thought they had, but they didn't get, so they can't do  
5                   that. They can't admit they made a mistake because it will  
6                   cost them a lot of money on fees.

7                   So what do they do?

8                   Well, your Honor told them what to do in the order  
9                   from April. I am paraphrasing again, but your Honor heard  
10                  what I said at the April -- at the March hearing and put a  
11                  discussion at the end of the prior order from April that  
12                  said: I don't have jurisdiction to address the  
13                  reasonableness of the settlement, but I have a concern about  
14                  this one provision, this reversion. And because I have this  
15                  concern, if the parties are going to come back again with  
16                  this provision in the agreement, they should be prepared to  
17                  explain the merits of that to the Court.

18                  That is essentially what your Honor said.

19                  So what did we get?

20                  They come back, and class counsel filed a brief in  
21                  oppo -- I believe it was the brief in opposition to our fee  
22                  application, where they say, there has been no change to the  
23                  settlement agreement. Burson's objection to the reversion  
24                  did not result in a change in the settlement agreement. The  
25                  cypress provision remains in the settlement agreement

1 unchanged, and that is true.

2 So what did they do?

3 They -- about 12 hours before we were -- our  
4 objection was due, late in the evening on October 6th, what  
5 did they do?

6 Well, ECF comes across my desk, and I see a  
7 stipulation regarding cypres. It says -- it's a two-page  
8 stipulation, and I am paraphrasing again, your Honor. It is  
9 in the record. You can see the exact language, but what it  
10 says is: There was never any reversion. It was never  
11 intended to be any money going back to Sprint, and this is  
12 consistent with what we said at the hearing.

13 Never mind Mr. Suprenant saying, yeah, the money is  
14 coming back to us.

15 So that never happened.

16 This thing on page 23 of the settlement agreement  
17 isn't there, and here is what we are going to do about it.  
18 If the Judge doesn't like it, we will change it. But what  
19 we are going to do as of right now with the Judge's approval  
20 is we're going to buy calling cards for the military, just  
21 like we always said we were going to do.

22 So when your Honor came in today, and I was  
23 interested in the Court's comments from the bench, where  
24 your Honor said to Mr. Cecchi, I believe, that has been  
25 changed, and Mr. Cecchi kind of stuttered and hummed and

1       shifted on his feet, because he can't say it was changed  
2       because then I am going to make a fee application on that  
3       change, and I've done that, and because it's going to make  
4       him look bad.

5                   So what he is going to try to say is it never  
6       happened. There is no reversion. There never was.

7                   Now, the even more interesting thing that I heard  
8       today is Mr. Boyle saying we are not even in the calling  
9       card business, we don't sell calling cards.

10                  Maybe they were going to buy the calling cards from  
11       Mr. Connolly's client, AT&T,

12                  Who are they going to buy these calling cards from,  
13       because they don't sell them?

14                  That's what he said.

15                  I think to figure that one out, your Honor, we  
16       would have to go back to the settlement agreement at page 23  
17       and look at what it says.

18                  If we go back to the settlement agreement at page  
19       23, we are going to see that it says: Any cash remaining in  
20       the fund -- let me get it -- I don't want to paraphrase this  
21       one. I want to get it exactly right, your Honor.

22                  Here is the quote from page 23, quote -- this is  
23       Docket Entry 84-2, the settlement agreement:

24                  "In the event there remains cash left in the fund  
25       after all claim periods have expired, the remaining cash

1 will be returned to Sprint Nextel."

2 Now, Mr. Cecchi says that was never the intent, not  
3 going to happen, a figment of my imagination.

4 So getting back to the language: "The remaining  
5 cash will be returned to Sprint Nextel, and Sprint Nextel  
6 shall issue prepaid calling personal identification numbers  
7 valued in the amount of the remaining cash to a charitable  
8 organization that holds a 501(c)(3) designation or other  
9 organization or institution to be agreed on by the parties,  
10 or failing agreement ordered by Judge Linares."

11 Okay. So now we can assess the credibility of what  
12 was said in court today, because now we know that where they  
13 will get these calling cards is from Sprint Nextel, the  
14 company that Mr. Boyle just said isn't in the business of  
15 providing calling cards, and Mr. Connolly finds out a lot,  
16 they're not going to buy them from AT&T.

17 And why are they buying calling cards at all?

18 That hasn't been explained. So what your Honor  
19 said is, if you want to do this, come in and defend the  
20 merits and explain to the Court why this should be done, so  
21 they come back.

22 Did we see a declaration from Mr. Cecchi about how  
23 great these calling cards are?

24 Did we get any detail about the calling cards?

25 Is there a declaration from Judge Politan about how

1       hard fought this mediation was, and arms-length, and it was  
2       a hard negotiation over these calling cards?

3                   Your Honor, we didn't get any of that.

4                   THE COURT: They don't say just calling cards.  
5       They say calling cards or anything else that I deem  
6       appropriate, right?

7                   MR. BURSOR: Wrong.

8                   THE COURT: What do you mean "wrong"?

9                   Counsel, reread the sentence all the way to the  
10      end. It says that.

11                  MR. BURSOR: "In the event there remains cash left  
12      in the fund after all claim periods have expired, the  
13      remaining cash will be returned to Sprint Nextel" --

14                  THE COURT: Continue.

15                  MR. BURSOR: -- " and Sprint Nextel shall issue  
16      prepaid calling personal identification numbers valued in  
17      the amount of the remaining cash to a charitable  
18      organization that holds a 501(c)(3) designation or other  
19      organization or institution to be agreed on by the parties,  
20      or failing agreement ordered by Judge Linares."

21                  THE COURT: Exactly.

22                  MR. BURSOR: So Judge Linares gets to pick the  
23      organization that will receive the calling cards.

24                  Judge Linares does not get to say, I don't want  
25      calling cards, I'd rather have cash.

1                   THE COURT: And when I took them to issue on that,  
2 they said, "or whatever the Court may."

3                   In fact, today I asked them whether or not they  
4 would just give the money to the class members in some kind  
5 of a proportional way, and they don't seem to disagree with  
6 that either.

7                   MR. BURSOR: Well, Mr. Cecchi disagreed with that  
8 because he thought that would overcompensate some class  
9 members. They might get more than their claim, more than  
10 they're out of pocket. That's what I remember Mr. Cecchi  
11 saying.

12                  THE COURT: He said he didn't want to create that  
13 issue --

14                  MR. BURSOR: Yes, and interestingly, he represents  
15 those people. He is supposed to be here trying to maximize  
16 their recovery.

17                  In reality, it's not going to result in anybody  
18 being overcompensated because --

19                  THE COURT: All right. Can we wrap it up? You  
20 have been talking now for almost an hour already --

21                  MR. BURSOR: Okay. So --

22                  THE COURT: -- I understand your arguments on the  
23 cypress and the reversion, what you claim is the reversion.

24                  MR. BURSOR: I claim it is a reversion, right.

25                  THE COURT: Right.

1 MR. BURSOR: Your Honor, just for the record, it  
2 was at page 87, lines 4 to 9 of the March 16th hearing  
3 transcript, where Mr. Suprenant said, quote:

4 If there is any money left, it comes back to us,  
5 and we match it dollar for dollar, dollar for dollar, with  
6 essentially calling cards that are donated to things like  
7 the USO.

8 I am really confused by Mr. Boyle's statement, that  
9 they are not calling cards from Sprint, and that they're  
10 coming from somebody else, because Sprint's not in the  
11 business --

12 THE COURT: What were the lines that you gave me?

13 MR. BURSOR: It's page 87, lines 4 through 9 of the  
14 March 16th, 2009 hearing transcript, Docket No. 305 --

15 THE COURT: I have that. Okay.

16 MR. BURSOR: So that's --

17 THE COURT: Thank you.

18 MR. BURSOR: -- I am not going to argue the fee,  
19 unless your Honor wants me to argue the fee now.

20 THE COURT: No. Well, how long is that argument  
21 going to take?

22 MR. BURSOR: A lot shorter.

23 THE COURT: Why don't you argue it now, so we can  
24 finish with you, have counsel address all of your  
25 objections, and then we can move on.

1 MR. BURSOR: I'll be very brief on the fee, but  
2 just one last point on the notice.

3 Mr. Hilsee has now done an analysis of plain  
4 language, the plain language that -- your Honor, the reading  
5 test analysis that he presented at the prior hearing, he has  
6 now re-run on the revised notice that went out as a result  
7 of the amended notice plan, and his findings on that are new  
8 and are presented in his affidavit that was submitted to the  
9 Court. He finds that it does not pass muster.

10 THE COURT: All right.

11 MR. BURSOR: Now -- I mean, there are two other  
12 broad topics, the reasonableness of the settlement and the  
13 fee issues.

14 On the reasonableness of the settlement, I will be  
15 brief because I don't think the Court is going to get there.

16 THE COURT: The reasonableness of the settlement  
17 was addressed the last time.

18 MR. BURSOR: Yes, it was, so I am not going to  
19 repeat old stuff on the reasonableness of the settlement.  
20 But the new information that I would present to the Court on  
21 the reasonableness of the settlement again relates to this  
22 reversion.

23 The proposal that is before the Court now has a  
24 stipulation. They tried to amend the settlement agreement  
25 with the stipulation that they filed the day before

1       objections were due. What that says is we still want to buy  
2       calling cards for the military. Class counsel have agreed  
3       to that, with Sprint. They want your Honor to approve that.

4               We object to that. We object to it being at page  
5       23 of the settlement agreement. We object to your Honor  
6       approving that stipulation. We object to any calling cards  
7       being bought for anybody, and there just hasn't been a  
8       showing as to what the value of these cards are or why it  
9       makes sense from the perspective of the class to purchase  
10      them from Sprint or whoever it is that Mr. Boyle is going to  
11      tell us they were going to be purchased from.

12               Now, the -- excuse me for a moment, your Honor. I  
13      lost my train of thought.

14               The other objection that we made broadly to the  
15      fairness of the settlement is to both the amount and the  
16      lack of injunctive relief.

17               And with respect to the amount, we have new updated  
18      claim statistics that show that now instead of getting  
19      800,000 to the class -- I mean, that was the value of the  
20      settlement when first proposed to the Court when we  
21      objected. The class members, the result they were going to  
22      get was \$800,000 in cash based on the claims they filed.

23               Now, based on the new claims data that we provided,  
24      the class is going to get about \$3.3 million because there  
25      was another two and a half million that came in as a result

1 of our objection.

2 So when judged against the recovery that we got in  
3 Ayyad, even this \$3.3 million recovery now, in Ayyad we were  
4 awarded, yes, we were awarded \$73 million in cash, and an  
5 additional \$225 million in basically debt relief, injunctive  
6 relief against charges on behalf of a class that is less  
7 than -- much, much less than one-fifth the size of this  
8 class, so even with the --

9 THE COURT: What is the status of your collection  
10 of the \$73 million award?

11 MR. BURSOR: Well, I think your Honor is aware we  
12 have not collected anything yet because it is on appeal.  
13 You know, Sprint has a right to appeal, just like we have  
14 appellate rights here.

15 THE COURT: That \$225 million in debt, is that also  
16 on appeal?

17 MR. BURSOR: Yes. That's also on appeal. Yes,  
18 your Honor.

19 So I mean, if your Honor is interested in who won  
20 or lost that case --

21 THE COURT: We have been through that. I don't  
22 want to hear it. I am going to consider it, but I don't  
23 want to hear it today.

24 MR. BURSOR: Yeah. You know, fair enough, your  
25 Honor.

1                   In any event, to get 3.3 million, it's a very small  
2 class --

3                   THE COURT: Wait. The reason I asked you the  
4 question before about the status of the collection, I wasn't  
5 being funny about that. I just didn't know if things had  
6 changed since yesterday. There could have been an agreement  
7 made, or there could have been an appeal that was dismissed  
8 that I didn't know anything about. I didn't want to be --

9                   MR. BURSOR: Okay. Fair enough.

10                  I apologize for the way I responded to that issue,  
11 your Honor. But it's on appeal, and it will be on appeal  
12 for a while.

13                  The second sort of broad objection to the fairness  
14 of the settlement relates to the subscriber class issue,  
15 which is the settlement does not require Sprint to change  
16 its practices in any way.

17                  THE COURT: Vis-a-vis the subscriber class.

18                  MR. BURSOR: Right.

19                  So in our case, for example, and I don't want to  
20 rehash the entire chronology of the All Writs Act, you know,  
21 practice here, but in our case -- our case got sort of  
22 bifurcated where the subscriber class got separated from the  
23 payer class, even though they're all on the same complaint,  
24 the same docket, and the payer class was tried first with  
25 the understanding that the result of the payer class case

1 would bind the subscriber class.

2 So we then win the payer class case, or at least  
3 win in the sense that we proved the illegality of the fee,  
4 which means that Sprint should then be enjoined from  
5 charging the fee.

6 In January of 2009, we in fact got a tentative  
7 ruling on a temporary restraining order enjoining Sprint  
8 from charging the fee, the value of which, just for the  
9 California class, was millions of dollars every month,  
10 if that TRO had gone into effect.

11 So -- and actually I am overstating that a little  
12 bit, your Honor, because the TRO was not going to enjoin  
13 collection per se. It was enjoining certain  
14 collection-related activities that we believe would have  
15 basically prevented collection.

16 They were not allowed to report, make adverse  
17 credit reports, and they were not allowed to assign the  
18 debt, so as a practical matter it would have stopped  
19 collection of millions of dollars just from the California  
20 subscriber class every month. That was the context in which  
21 the parties came to you to get the All Writs Act injunction.

22 In class counsel's brief at page 17, in their  
23 response to objections, they say the following, quote:

24 Class counsel convinced Sprint to settle by  
25 pointing to the ability of a Federal Court to enjoin

1 parallel state court actions through the All Writs Act.

2 That is how class counsel got the settlement.

3 They went to these guys, and they said, we can enjoin Mr.  
4 Bursor's case. That is how they settled it. That's what  
5 they say in their brief, so that had a lot of immediate  
6 value to Sprint because once that TRO got entered in our  
7 case, the spigot would have been turned off.

8 If you look at Appendix A to our recent objection  
9 brief, your Honor, that is the one where it has the  
10 cancellation fees collectibility analysis, and the numbers  
11 are rather large. 60, 70, \$80 million each month.

12 That is what we were threatening. And when I say  
13 "threatening," it was a sure thing by the time January came  
14 around, we were going to turn off not the whole spigot  
15 because our case only covered California, but California is  
16 about a fifth of the nation.

17 We were going to turn off a fifth of that spigot.  
18 That is about 15 -- that is about 12 to 14 -- 12 to \$15  
19 million every month. That was an immediate risk, and to say  
20 risk is to overstate the uncertainty, it was going to stop.

21 They knew that was coming for a long time because --  
22 and this is all in the All Writs Act brief, your Honor, but  
23 the process of getting from verdict to TRO in California was  
24 long and drawn out, but it was clear where it was going.

25 So Mr. Cecchi comes along and convinces them that

1       he could put a stop to that, if they settle here, and they  
2       do that for, you know, a very small amount of money, less  
3       than, you know, we would have saved the class -- the  
4       subscriber class members in California even in a single  
5       month, when you talk about the whole fund. And when you  
6       talk about what's actually being paid out to class members,  
7       the class members would have gotten \$800,000 under the deal.  
8       That's about two days of ETFs in our case.

9                   So that's a very small amount, and they didn't get  
10       injunctive relief that we had basically already got.

11                  And, your Honor, the reason that is important is  
12       because that just had tremendous value, and they just gave  
13       it away for nothing.

14                  Your Honor, I know if you look at -- I know this  
15       Court now has a broader experience with these ETF cases  
16       because your Honor has the T Mobile case, and your Honor has  
17       the AT&T case. If you look at the settlements that are  
18       before your Honor in those cases, and again, I am not  
19       endorsing those settlements. We got issues with the AT&T  
20       case that we will address later, but not today.

21                  But none of the other carriers attempted to do --  
22       even attempted to do what Sprint is attempting to do here  
23       because in the T Mobile case, T Mobile agreed under that  
24       settlement to prorate the ETF going forward. There's an  
25       injunction in the T Mobile settlement, and that has a lot of

1 value. And in the AT&T case, AT&T agreed to essentially the  
2 same type of injunctive relief.

3 And although I will likely be objecting in the AT&T  
4 case to other things, I will be the first to concede that  
5 that injunctive relief has a lot of value, and this is the  
6 only case that has even been attempted. In the Verizon  
7 case, we got that relief as well.

8 This is the only one of the four carriers where  
9 they are coming in and saying, we are going to keep on doing  
10 it. This is the only one of the four carriers by the way  
11 where there has already been a finding that this fee is  
12 illegal. So that is both unfair, unreasonable, and it  
13 creates a lot of questions for this settlement.

14 Now, your Honor, I will leave it at that on the  
15 fairness of the settlement. If your Honor wants to hear  
16 from me on fees, I'll do that.

17 THE COURT: Why don't you do that now, so that way  
18 when we take our shortened lunch break for my staff, we will  
19 have finished all of your arguments by then.

20 MR. BURSOR: Your Honor, may I just have a moment  
21 to get my other book?

22 (Counsel confer)

23 Your Honor, I am addressing only the fee  
24 application for the work done in connection with the  
25 Galleguillos' objection.

1                   There is a distinct fee application that Mr.  
2                   Plutzik is going to present based on the prior work from the  
3                   subscriber class case in California and Molfetas and Lee and  
4                   Robertson, so I will just limit myself to the objection on  
5                   the fee.

6                   Now, I think the lesson we learned from your  
7                   Honor's ruling on the T Mobile case and the key quote that I  
8                   took away from that case was that this Court in applying  
9                   Cendant and the Third Circuit law gives great weight to the  
10                  result that's actually achieved as opposed to the number of  
11                  hours worked.

12                  In connection with the Galleguillos' objections, we  
13                  achieved quite a bit. We challenged the notice that was  
14                  found inadequate. Our objections to the notice were  
15                  sustained in several respects, and I think even Mr. Cecchi  
16                  acknowledged that our entitlement to a fee is really not in  
17                  dispute, although he said we should -- well, he said we  
18                  shouldn't get any fee because we are still objecting,  
19                  because we're still trying to either make this settlement to  
20                  go away to get a better deal --

21                  THE COURT: I understand. He is saying you are  
22                  attacking the funds, and because of that -- forget about  
23                  what he said. I understand that --

24                  MR. BURSOR: That is not the law.

25                  So we did accomplish something because your Honor

1       sustained our objections, and that does have a quantifiable  
2       effect in a few different ways.

3                 One way that we put in our brief was that --  
4       actually the only methodology that we found in a Third  
5       Circuit case was from the Prudential case, and we explain  
6       that in our brief at page ten -- beginning at page ten. We  
7       call it the Prudential calculation.

8                 What the Third Circuit did in Prudential was it  
9       calculated the benefit of the objection as a proportion of  
10      the total fund and awarded that proportion of the total fee  
11      award.

12                 THE COURT: Right.

13                 MR. BURSOR: So when we apply that just to what we  
14      accomplished on the reversion, and I think it would be a  
15      fair point to say that I am getting ahead of myself because  
16      maybe we have not accomplished anything on reversion,  
17      because maybe the reversion is going to be approved -- I  
18      mean, I can't imagine the Court is going to approve it, but  
19      you know, let's assume for sake of my argument that the  
20      money is not going to go back to Sprint as a result of our  
21      objection.

22                 If that is the case, we are entitled to a fee on  
23      that because the class gives that money, not Sprint, as a  
24      result of our effort.

25                 Now, the amount of reversion based on the claims

1 data that we had at the prior hearing was approximately \$6.3  
2 million. Now, that amount has gone down a bit because  
3 Sprint had to spend more than on notice to the class, which  
4 is a benefit to the class.

5 They spent an additional -- about \$800,000  
6 providing additional notice, and there has now been an  
7 additional two and a half million dollars in claims. So if  
8 one were to try to calculate the amount of the reversion  
9 today -- I've actually done that. If I may, your Honor, I  
10 have prepared a single sheet --

11 THE COURT: Were you able to break down the number  
12 of claims that were attributable to the new notice versus  
13 just claims that would just come in anyway?

14 MR. BURSOR: Well, that's --

15 THE COURT: It is hard to do, right?

16 MR. BURSOR: -- it's hard to do.

17 You have to know how many claims would come in  
18 anyway. I think that could be done. That is why when we  
19 filed our fee application, we asked for discovery.

20 Gilardi issues a weekly report showing how many  
21 claims came in in a week -- well, it shows the cumulative  
22 amount. And by looking at the prior week's claims, you can  
23 see how many came in in that week.

24 Now, as of the time of the last hearing, there had  
25 been approximately \$690,000 worth of claims filed. That is

1       on an exhibit that we provided to the Court, and it is also  
2       attached again to our objection. I think it's attached as  
3       Appendix C to our objection. It's one of the appendices  
4       to our objection. It is the one with the handwritten  
5       calculation on it.

6                     THE COURT: I understand.

7                     MR. BURSOR: So when we came in in March, there had  
8       been, give or take, about \$680,000 in claims, and the new  
9       notice was issued in August, as I understand it, based on  
10      the limited materials that were put in by the parties. It  
11      was mailed notice that went out during the August billing  
12      cycle.

13                  So we have -- we know there was six-eighty as of  
14      March.

15                  When we get Ms. Carmen's declaration, she said that  
16      before the second notice period began, there had been  
17      810,000, so there was another \$130,000 worth of claims that  
18      came in between March of '09 and August of '09.

19                  And, your Honor, I would rather have more precise  
20      figures, because I would like to have the weekly reports,  
21      like the ones we put in the record, and that is why we asked  
22      for that, but this is the best we can do with the snippets  
23      of information we've been given.

24                  So what that shows is that the claims have trailed  
25      off to a trickle, and there wasn't going to be any more

1 notice, and without any more notice, the trickle isn't going  
2 to get bigger.

3 So, you know, can we say that there wouldn't have  
4 been any?

5 No.

6 Can we make a reasonable projection how many there  
7 would have been with the Gilardi weekly reports?

8 Yes, we could, if we had them. The Court could do  
9 it, if the Court orders the production.

10 These documents already exist. I mean, they work  
11 for me -- I mean, they did in our Verizon case, and we got  
12 weekly reports. These fellows are getting weekly reports.  
13 The only one here who doesn't have it is me and the Court.

14 So it had trickled off to very little, and then all  
15 of a sudden, between August and now, which goes out in the  
16 August billing cycle, so it is between one and two months,  
17 there is two and a half million dollars in claims.

18 So to say, well, that really wasn't because of the  
19 second notice, therefore, it is not attributable to our  
20 objection, I mean, I suppose you could say that, but it  
21 wouldn't be true. It wouldn't be defensible.

22 I think it is clear that these \$2.4 million in  
23 claims came in because there was another notice.

24 Maybe there would have been 20, 30, \$40,000 more in  
25 claims, but for -- maybe even without it, but maybe there

1       wouldn't have been any. Wouldn't have been two and a half  
2       million, so this is my -- my -- it is shown on the sheet  
3       that I gave you.

4                   So the Prudential calculation based on the  
5       reversion is in our brief setting a value of the reversion  
6       at 6.3 million, you know, assuming it doesn't get approved,  
7       which I don't think it is going to.

8                   We got the money for the class, not them, so we  
9       should get the proportionate amount.

10                  But this chart that I made today has an alternate  
11      Prudential type of calculation, because when I got the T  
12      Mobile order from your Honor, and again, I don't agree with  
13      it, but it is not for me to agree or disagree, you're the --  
14      the order is the order, so I have to live with it or appeal.  
15      What that order says is what matters is the result.

16                  What did you do for the class?

17                  And so I went back and looked at these claims data  
18      and said, let's look at where the rubber meets the road.  
19      Let's look at where the dollar bills are hitting the class  
20      members' wallets, because that is what any of us have done  
21      for the class. They either got money or they didn't.

22                  If they got money as a result of what we did, we  
23      should be compensated.

24                  So as a result of what these folks did, class  
25      members are getting \$810,000.

1                   As a result of what we did, the class members are  
2                   getting an additional two and a half million dollars.

3                   Our efforts have produced three times the bottom  
4                   line result as their efforts. Therefore, we should get  
5                   three times the fee that these folks get because we did  
6                   three times as much for the class.

7                   Now, let me be clear. I don't want any fee because  
8                   this Court does not have jurisdiction because the notice is  
9                   defective, and even if the notice wasn't defective, this  
10                  settlement should not be approved because it is the worst  
11                  deal for class members I've ever seen in my life.

12                  But in the event the settlement is approved, we  
13                  should be compensated for what we did, and they should be  
14                  compensated for what they did, and even if we get every  
15                  penny of the fee, and Mr. DePalma said this at the first  
16                  hearing, and I agree with it wholeheartedly, even if we were  
17                  awarded every penny of the fee, we are going to appeal any  
18                  approval of the settlement because we are not interested in  
19                  obtaining a fee here. We're interested in representing  
20                  class members and doing what's best for them.

21                  But if the settlement is approved over our  
22                  objection, we are entitled to that compensation.

23                  Now, in Mr. Cecchi's objection to our fee  
24                  application, he has a couple of other theories.

25                  One theory he's got is that the Court should count

1       the pages in our brief and make some kind of a fraction  
2       based on the number of those pages that were related to  
3       objections that he characterizes as being sustained as  
4       opposed to overruled.

5               I don't think there is any legal support for that  
6       approach, but if there is, I would like when Mr. Plutzik  
7       argues the fee application from the other one, I'd like that  
8       one to be calculated based on the number of the pages in the  
9       briefs, too, because they don't have very many, and we have  
10      a lot of them.

11               But I don't think the Third Circuit would approve  
12      an analysis that says, pay me ten percent of my lodestar  
13      because ten percent of the pages in the briefing I filed  
14      were related to the notice. I don't think that would fly.

15               The other thing that he does is he put in, in his  
16      supplemental declaration from Ms. Carmen, that calculates  
17      the fraction of the new claims that came in -- my chart has  
18      the two and half million claims that came in since our  
19      notice went out.

20               What he does is say, okay, Ms. Carmen, please tell  
21      us how many of those came in from California.

22               So I assume he wants to try some kind of maneuver  
23      where we get 16 cents on the dollar, because California is  
24      16 percent of the country, which is what was done to us in T  
25      Mobile case.

1                   Why would that be wrong?

2                   Well, other than the T Mobile opinion, there is no  
3                   legal support for that.

4                   But in this case, this objection is not -- this was  
5                   not work that was done on behalf of the California class or  
6                   benefited the California class.

7                   The objection we made was an objection to benefit  
8                   the entire class, and that did benefit the entire class in  
9                   all 50 states because the notice that was issued as a result  
10                  of our objection didn't just go to California people. There  
11                  were 15 million individual notices that were mailed to the  
12                  people who previously got that bill insert that the Court  
13                  found lacking, so there is no basis to cut the benefit that  
14                  we achieved to say just look at California. We benefited  
15                  the whole class.

16                  So, you know, the Court has some discretion, but  
17                  the discretion has to be exercised based on facts found in  
18                  the record based on the evidence, and that California split  
19                  wouldn't work.

20                  Your Honor, I almost got it up there, but I got off  
21                  on a side track. The recalculation of the disbursements  
22                  from the fund and the amount of the reversion, if I may hand  
23                  it up.

24                  THE COURT: Sure.

25                  We will mark that version 2.

(Document handed to the Court)

MR. BURSOR: If I can just walk through this quickly, just like a minute and a half, we start with the common fund of \$14 million.

The parties spent \$528,000 on the first publication.

They estimated in the Rice declaration -- in the amended notice plan, that the bill insert would cost \$750,000.

The postcards to the Robertson class would be another \$73,895.

The postcards to the partial list that they assembled would cost \$34,623.

When you deduct those notice costs from the common fund, you are down to \$12,613,482, which is the remainder in the fund after the notice costs to date.

The Gilardi administration, I am estimating is going to cost about \$1 million.

I believe they said that they have been invoiced for about \$250,000 so far, but they haven't done any of the claims processing yet. Based on the bills we got in the Verizon case, I think that is conservative.

So the remainder after notice and administration is going to be a little over \$11.6 million.

Class counsel is asking for slightly more than \$6

1 million in fees and expenses, leaving about \$5.6 million for  
2 the class after the fees are taken off. And we now got  
3 class claims of about -- class cash claims of about 3.3,  
4 which leaves 2.3 million to revert to Sprint under the  
5 calling card scheme that they want your Honor to approve.

6 So if nothing else, you know, when calculating --  
7 you know, I don't know how the Court will rule on this  
8 reversion. We think it should be eliminated in its  
9 entirety, but if it's not eliminated in its entirety, at  
10 least as a result of our efforts, it's gone from 6.3 million  
11 down to 2.3 million, so \$4 million less reverting to Sprint.

12 If you do approve the reversion, I hope that they  
13 get a really great deal on the calling cards.

14 Your Honor, lastly, I do want to say that I don't  
15 think -- this is the objections to the notice that we made  
16 here cannot be cured with a do-over, and the reason is, a  
17 second do-over. And the reason is because once you identify  
18 the millions of people who are reasonably identifiable at a  
19 relatively low cost, the additional notice cost to provide  
20 notice to those people will deplete the fund to such an  
21 extent, that there won't be any cash left to pay claims or  
22 to revert to Sprint.

23 So, you know, to the extent the Court is weighing  
24 in its mind, gee, if I sustain this objection, can we redo  
25 this again the way we tried to redo it last time, I think

1 the answer to that is no.

2 And, your Honor, unless you have any questions for  
3 me, I will leave it at that.

4 THE COURT: I have no questions.

5 Thank you.

6 MR. BURSOR: Thank you, your Honor.

7 THE COURT: We are going to take a break now and  
8 then when we come back, I will hear from you and Mr. Cecchi  
9 or whoever will address the Court.

10 Again, I caution you also not to rehash old  
11 arguments, be succinct and specific as to the arguments  
12 raised by Mr. Bursor, and then we will go from there.

13 You wanted to say something?

14 MR. PLUTZIK: Yes, your Honor.

15 Before we break, just to question about the order  
16 in which the Court wants to take matters up. I am going to  
17 be speaking about the two matters, the fee --

18 THE COURT: Just for the record, you have to state  
19 your name.

20 MR. PLUTZIK: Yes, sorry.

21 Alan Plutzik.

22 I am going to be speaking about two matters.

23 Number one is the fee application that has been submitted  
24 with regard to efforts related to the Ayyad, Robertson and  
25 other cases, and secondly, the objection to the fee

1 application of class counsel.

2 So I wanted to put that in front of your Honor to  
3 see whether your Honor wants to hear from me before Mr.  
4 Cecchi and Mr. Boyle respond or not. I mean, I am happy to  
5 do it either way.

6 THE COURT: Okay.

7 I guess it does make sense to hear from you, so  
8 they can address both yours and Mr. Bursor's objections in  
9 one sitting, and we don't have to keep going back and forth.

10 MR. PLUTZIK: That is fine, your Honor.

11 Thank you.

12 THE COURT: Okay.

13 Is there anybody else that is going to be speaking  
14 with regard to the fee?

15 MR. EVOLA: Your Honor, Robert Evola for the Hall  
16 objectors.

17 THE COURT: Okay.

18 Now, to the extent that you are not going to be  
19 repeating any of the arguments that have been made, then you  
20 can also speak.

21 Mr. DePalma?

22 MR. DE PALMA: I thought you had mentioned was  
23 there anybody else that would speak with regard to the fee.

24 THE COURT: Yes, I did.

25 MR. DE PALMA: I stood up, so that when it was my

1 turn, if it is, I will be very brief, your Honor. I think  
2 most of what I have is in the papers, and so I do intend to  
3 speak.

4 THE COURT: All right.

5 So it is just you and Mr. Plutzik. I will probably  
6 take all of the fee arguments then upfront, so that way you  
7 can address them after the break, all of you, one after the  
8 other.

9 MR. EVOLA: I am not addressing the fee.

10 THE COURT: You are not?

11 MR. EVOLA: No. I misunderstood, your Honor.

12 THE COURT: Okay.

13 Anybody else going to be addressing the fee, other  
14 than Mr. DePalma then?

15 All right. Then we will hear from Mr. Plutzik and  
16 then hear from you after lunch, and then we will have  
17 counsel deal with it, and that only leaves the last of the  
18 objections, which hopefully will be brief because they are  
19 going to be limited to new things.

20 All right. We will take a 45-minute break. It is  
21 quarter after twelve for the record, and we will be back at  
22 one o'clock.

23 Thank you.

24 (Lunch recess taken)

25

1 (Afternoon session)

2 THE CLERK: All rise.

3 THE COURT: All right.

4 You may be seated.

5 Mr. Plutzik?

6 MR. PLUTZIK: Thank you, your Honor.

7 I am Alan Plutzik, and I am going to address two  
8 fee related issues.

9 The first is the application for an award of  
10 attorney fees and expenses on behalf of the law firms  
11 related to the Ayyad, Robertson, Molfetas and Lee cases. I  
12 am not going to burden the record with a list, but we filed  
13 a fee application, and it is all of the firms that filed  
14 that application, including my own and Mr. Bursor and many  
15 others.

16 We are the lawyers who litigated the California  
17 cases and have litigated them.

18 Second: I am going to address the Galleguillos, et  
19 al. Objection to the fee request of class counsel and the  
20 Larson generally.

21 First, with regard to the fee application related  
22 to the Ayyad case and other cases like that, I understand  
23 and take to heart the Court's admonition that it doesn't  
24 want to hear a bunch of repetition. I am going to focus on  
25 new things to the extent that I can.

1                   The first item that I want to call to the Court's  
2                   attention is a new Third Circuit case that addresses  
3                   attorney's fees, and the name of that case, like many others  
4                   is In Re: Diet Drugs. It is one of that Diet Drugs series  
5                   of decisions, and it is found at 2009 U.S. App. Lexis 22194.  
6                   It was decided on October 8th, 2009.

7                   I want to simply mention a couple of principles  
8                   recognized by the Third Circuit in that new Diet Drugs case.  
9                   One is found at star 70, where the court says that in  
10                  discussing a question of allocation of fees between and  
11                  among counsel, it says and I quote: "Basic concerns for  
12                  fairness and due process always circumscribe judicial  
13                  discretion."

14                  I will show in my remarks today that the concern  
15                  for fairness and due process militates in favor of a  
16                  substantial fee award to the counsel who were engaged in the  
17                  litigation in California for the last six and a half years.

18                  The second issue addressed in Diet Drugs that I  
19                  want to call to the Court's attention is at star 56 and  
20                  following. The Court says that the common benefit doctrine  
21                  applies to the allocation of fees, and the Court applies it.  
22                  In circumstances under which the work of one counsel in a  
23                  particular case was held to confer a benefit on other  
24                  counsel in another case, and the award reflected the  
25                  conferral of that benefit, and I will show your Honor today

1       in my remarks that the common benefit doctrine as applied to  
2       this case would militate in favor of substantial and fair  
3       fees for those counsel who have been performing litigation  
4       in California for all of these years since 2003.

5                  And the third point that the Diet Drugs court  
6       addresses is simply that the trial court would abuse its  
7       discretion, if it had failed to apply the proper procedures,  
8       and this is the key point, or if it were to base an award on  
9       findings of fact that are clearly erroneous.

10                 So the third point I want to show, your Honor, that  
11      relates to Diet Drugs is I want to make sure that the record  
12      is clear, so that your Honor is not under a misconception  
13      that could mislead the Court into making a finding that it  
14      is not supported in reality, and the reason that is  
15      necessary is because there have been representations made in  
16      counsel's briefs that are not correct and give the Court a  
17      false impression, so I will get to all of those in my  
18      remarks today.

19                 A second item that is new since last time, as the  
20      other counsel have pointed out, is the Court's ruling in the  
21      Milliron case, and that is the case against T Mobile, and in  
22      that case the Court allocated fees as between California  
23      counsel in the California case and class counsel and their  
24      allies here and awarded California counsel, at least in my  
25      group, a multiplier, negative multiplier of 0.180 on our

1 lodestar while giving members of Mr. Weiss' and Mr. Cecchi's  
2 group a multiplier of nearly two on their lodestar.

3 The Court did that based on certain conclusions  
4 that the Court drew from the record in that case, and I want  
5 to urge the Court not to make a similar order here, and I  
6 want to go through a couple of the conclusions that the  
7 Court reached in that case and point out to the Court why it  
8 is that they are not valid in this case.

9 The Court found that the benefit conferred by  
10 counsel -- the Court found in Milliron that the benefit  
11 conferred by counsel in the California T Mobile litigation  
12 was essentially limited to California residents, and there  
13 wasn't a benefit that could be compensated that was  
14 conferred on residents of other states.

15 I am not here to reargue that case, but in this  
16 case, there is no support in the record -- there would be no  
17 support in the record for such a conclusion here. In fact,  
18 there is every support in the record for the contrary  
19 preposition in this case.

20 And I think the very first point, the very first  
21 thing that proves beyond a shadow of a doubt that there was  
22 very, very substantial influence and benefit coming from the  
23 California litigation to this case is the passage from the  
24 brief cited by Mr. Burson in his remarks, and that is at  
25 page 17 around the middle of the page of class counsel's

1 memorandum of law in support -- in opposition to the  
2 objections to the settlement, where class counsel says that  
3 they convinced Sprint to settle, quote, class counsel  
4 convinced Sprint to settle by pointing to the ability of a  
5 Federal Court to enjoin parallel state court actions through  
6 the All Writs Act, close quote.

7 Mr. Bursor explained why it is that it was so  
8 important to Sprint to be able to enjoin parallel state  
9 court proceedings under the All Writs Act, so I am not going  
10 to belabor it, but they were facing an injunction that would  
11 cost them tens or even hundreds of millions of dollars in  
12 that case, so it would not be appropriate nor would the  
13 record support it if this Court were to conclude that there  
14 was no benefit to this case from the work done in  
15 California.

16 Secondly: In Diet Drug, the principal benefit  
17 conferred by the counsel in case number one, if you will, on  
18 the counsel in case number two, there are more cases  
19 involved there, but to make it simple, was discovery. The  
20 discovery conducted by the counsel in that case led to the  
21 settlement and led the defendant to want to settle, and the  
22 Court compensated the counsel who did that work.

23 Now, in this case, we have a record of what class  
24 counsel looked at in connection with arriving at this  
25 settlement. It is all of the work that we did. They are in

1       court today asking to be compensated for reviewing the  
2       transcripts of depositions that we took, documents that we  
3       obtained by the sweat of our brow by making motions to  
4       compel and by culling through them and by picking the best  
5       ones. That is very time consuming work and very expensive  
6       work, simply paying for copies, traveling to depositions,  
7       paying court reporters, all of this stuff, we did that.

8                 They are asking to be compensated for it, and your  
9       Honor, if the Court is considering compensating them for  
10      reading deposition transcripts, we submit respectfully the  
11      Court should be compensating the counsel who took those  
12      depositions. And on this record, for example, I think Mr.  
13      Bursor has a declaration in, in which he says he was  
14      involved in 22 depositions in this litigation.

15               I have a declaration, your Honor, in which I  
16      informed the Court that Mr. Fischer of my office and I were  
17      involved in something like 20 depositions in this case.  
18      Those are the depositions whose transcripts they read.

19               Okay. I also want to mention other respects in  
20      which work in California had a very direct effect on this  
21      case. The FCC proceeding, which we have informed the Court  
22      has now been withdrawn by its proponents, that would have  
23      had a devastating effect on litigation involving early  
24      termination fees nationwide, not just in California, had the  
25      FCC come out with a ruling, which it may very well have

1 done, had we not opposed it.

2 We spent a lot of money and a lot of time at the  
3 FCC defeating that, and it was not easy. I think the record  
4 reflects that a number of us went back there many times.

5 I think Mr. Burson's declaration says he was there  
6 seven times.

7 I was there for a public hearing in front of the  
8 Chairman of the Commission and the other Commission members  
9 speaking for consumers, and that was a very, very severe  
10 threat. I don't think that can be ignored.

11 These counsel didn't involve themselves in that,  
12 other than I believe a \$20,000 contribution made by one of  
13 them in connection with that, but we never saw them working  
14 on it.

15 We had to engage two firms, the Cuneo firm and the  
16 Hilliard firm, to go back there and fight with us to defeat  
17 that, and that is a clear and tangible benefit to the class  
18 that we conferred.

19 We proved that these classes can be certified, and  
20 we did that in response to determine opposition with regard  
21 to the Nextel class. For example, there was a very  
22 strong -- it was heavily, heavily litigated. We prevailed  
23 and we got a class certified.

24 With regard to the Sprint subscriber class, that  
25 class -- that certification of that class was denied by our

1 trial court, so we took it up, and we appealed, and we were  
2 able to obtain a reversal of that ruling, which proved that  
3 a class of current subscribers can be certified in this  
4 case. That is important, important to this case, important  
5 to the results.

6 The Court also said in its Milliron opinion that  
7 the position of counsel, California counsel if adopted by  
8 the Court, could have the effect of recognizing that when  
9 counsel in one state file a case that they put a stake in  
10 the ground and thereafter they are the ones that own that  
11 and counsel in other states can't come along later and file  
12 suits and settle them and get compensated.

13 Respectfully, your Honor, the Court should not draw  
14 such a conclusion in this case. We are not claiming, not in  
15 this case, and we weren't in Milliron, that we have a stake  
16 in the ground, and that nobody can come along later and  
17 litigate it in another state.

18 Our point is this: Anybody who wants to can file a  
19 case in another state. Just if they want to settle our  
20 case, if they want to settle our case, we are entitled to be  
21 fairly compensated for work we did in our case.

22 Mr. Cecchi said in his remarks we didn't settle  
23 their case. He said we didn't settle the California case,  
24 what are these people doing here, we carved out their case,  
25 we didn't settle it.

1                   Your Honor, that is an incorrect statement.

2                   THE COURT: Why? It has been carved out, right?

3                   MR. PLUTZIK: The IF peer class has been carved  
4 out.

5                   What about Nextel?

6                   We filed suit against Nextel in a case, which is  
7 known now as Robertson versus Nextel. That is a payer  
8 class. There was no current subscriber class because Nextel  
9 got swallowed up by Sprint, but that was a payer class. It  
10 was an important case, and they seemed to have trouble  
11 drafting a notice, which makes it clear, but apparently they  
12 intended in their settlement to attempt to settle out the  
13 Robertson versus Nextel case.

14                  Why are they here telling your Honor that they  
15 didn't settle our case?

16                  They settled that case.

17                  The Sprint subscriber class case, as I told the  
18 Court, we spent a lot of time and effort and money on that  
19 portion of the Ayyad case, the subscriber class. We had to  
20 take it up. We handled an appeal, and we won the appeal to  
21 get that class certified, and they are settling that case.  
22 They settled it out from under us.

23                  If they want to settle our case, leaving aside  
24 whether the settlement should be approved or not, and I  
25 associate myself with Mr. Burson's remarks and his position

1       that it should not, but if there is to be a settlement that  
2       settles our case, it is fair and just that we be compensated  
3       for work we did in our case.

4               Had they not settled the Robertson case and the  
5       Sprint subscriber class case, we would have continued to  
6       litigate them. We believe we would have prevailed in them,  
7       and we would have been able to seek an award of fees in the  
8       California State Court under either a common fund theory or  
9       under a fee shifting theory under California law, and that  
10      would be appropriate, and they should not be able to come in  
11      and settle out those cases and then say that we should not  
12      be fairly compensated.

13               The third item that is new is a supplemental  
14       declaration that I submitted to the Court, and I wanted the  
15       Court to know -- I assume the Court is familiar with it -- I  
16       wanted the Court to know the effect on a small firm of this  
17       kind of thing happening, the effect of an order such as was  
18       entered in the Milliron case.

19               We are a six-lawyer firm. This early termination  
20       fee litigation including the Sprint and Nextel portions of  
21       it has been extraordinarily taxing to my firm as a matter of  
22       time, as a matter of effort, as a matter of lodestar, as a  
23       matter of expenses, as a matter of preclusion of other  
24       employment, which I mentioned specifically in my  
25       declaration.

1                   As I said in my declaration, it is not a  
2 sustainable business plan to be spending six and a half  
3 years working our fingers to the bone on litigation only to  
4 see our case settled out from under us and be compensated at  
5 18 cents on the dollar. That is not sustainable. And the  
6 case law says, your Honor, that the Court needs to be taking  
7 into consideration the encouragement of counsel who put  
8 themselves out to bring important cases benefiting the  
9 public.

10                  This litigation is precisely that type of case, and  
11 a message -- I am sure the Court didn't intend it -- but the  
12 message we received from an order that gives us 18 cents on  
13 the dollar of our lodestar is to the contrary. It is a  
14 message of discouragement. In fact, it is such a result  
15 that would have -- if adopted in this case -- would have an  
16 economically ruinous effect on the counsel who devoted so  
17 much time and so much money to that litigation, and it would  
18 have a discouraging effect on counsel, including my firm,  
19 who might be contemplating bringing cases of this sort in  
20 the future.

21                  We can't be bringing cases of that sort if at the  
22 end of the day, the compensation is so much closer to zero  
23 than it is to a full recognition of the time and effort and  
24 work and accomplishment in those cases.

25                  Of course, we work on a contingency fee basis like

1 all class action lawyers do. So when we take a case, we are  
2 committed to it, and we have to be. But if at the end it is  
3 going to turn out with compensation that falls so far short,  
4 we really have to think twice for self-preservation.

5 Now, I know the Court has a lot -- a lot more to  
6 think about when it is awarding fees than the effect of its  
7 award on my firm or the firms in our group. Mr. Burson who  
8 is a solo practitioner, Mr. Franklin who is a solo  
9 practitioner, Mr. Farino who is a solo, and others who have  
10 small firms, but I submit, your Honor, that that is one of  
11 the considerations that this Court must consider in making  
12 its fee application -- in making its fee award.

13 THE COURT: The size of the firm?

14 MR. PLUTZIK: No, your Honor, not the size of the  
15 firm.

16 THE COURT: Look, I recognize that you have a small  
17 firm, that they are solo practitioners, but where is there  
18 in the law that that is a component that I should take into  
19 consideration in determining what reasonable compensation  
20 is?

21 MR. PLUTZIK: I am not claiming that is a  
22 consideration. I do not --

23 THE COURT: Well, you did spend a lot of time  
24 saying to me how it is potentially ruinous to your firm and  
25 the amount of work you put in and all of that.

1                   At the end of the day, the analysis has to do with  
2 what is fair compensation in light of what you did do --

3                   MR. PLUTZIK: Exactly.

4                   THE COURT: -- not precisely the firm, or whether  
5 or not it is a solo or not a solo or what effect it will  
6 have on the firm. As sympathetic as I am, and I am  
7 sympathetic because I came from a small firm myself, that is  
8 not part of the analysis that I have to do.

9                   MR. PLUTZIK: That is not what I am saying, your  
10 Honor. I failed to communicate effectively, so let me  
11 clarify.

12                  The size of the firm has nothing to do with it.  
13 What has to do with it is precisely what your Honor said,  
14 and that's the fairness and adequacy to these firms.

15                  THE COURT: You mean in light of the work --

16                  MR. PLUTZIK: In light of the work --

17                  THE COURT: -- not in light of their size or  
18 whether they are solo or a six-man firm or whatever. That  
19 is sort of an argument that appeals to my sympathy as  
20 opposed to the law.

21                  The law has to do with what is it that you brought  
22 to the table, what is it that you did, right?

23                  MR. PLUTZIK: Yes, your Honor, exactly. And that  
24 is why I fear that I still have not clarified my point.

25                  I am not claiming that the size of the firm has

1 anything to do with your Honor's decision about fees. If I  
2 gave that impression, it is because I didn't communicate  
3 effectively.

4 THE COURT: What does it have to do with, the fact  
5 that you have a six-man firm, or Mr. Bursor is a solo, what  
6 part does that play in the analysis?

7 You brought it up for a reason. What is the  
8 reason?

9 MR. PLUTZIK: The Court has to -- the Court should  
10 consider, we submit, exactly what your Honor said, the  
11 fairness and adequacy to all of the firms involved in making  
12 its allocation of fees.

13 So if a lot of effort was expended, and it was, if  
14 a lot of expense was expended, and it was, and if a lot of  
15 accomplishment was achieved, and it was, that is what the  
16 Court should look at, that the firms, whether they were  
17 firms with one member or 20 members or a hundred or 500  
18 members, it is the same analysis. It is just that to  
19 award -- to give an award, which does not provide adequate  
20 compensation, is a hardship on all of the firms of whatever  
21 size that have devoted themselves to this effort, and this  
22 is what I want -- this is a question I want to leave with  
23 the Court.

24 Our cases were filed in 2003, and they have been  
25 there for six years.

Counsel's cases here, this case was filed in late '07, four and a half years after our cases. Milliron was filed in August of '08, more than five years after our cases.

What were we supposed to do in the meantime?

We had to litigate. We had to fight. We had to represent our classes zealously, and that is what we did. We had no alternatives. We couldn't wait around for somebody to come along later. We were obligated to do the work. To do otherwise would have been a breach of our ethical duties.

The Court should compensate us for the work that we did during that time. Your Honor held in Milliron correctly that it is for the Court to decide on fair compensation for counsel who performed work before class counsel were appointed, and in making that determination, your Honor, we submit that the Court needs to take into account the fairness and adequacy to us, not merely overall, but to us. And in doing the allocation, your Honor, you are allocating between fees and -- between firms. And in the Diet Drugs case, as I pointed out, the Court said that that allocation process involves questions of fairness and due process.

Therefore, the Court we submit needs to take a look at whether it is compensating the time of counsel in those cases at such a small negative multiplier, like .18, which

1           is what we got in Milliron.

2                 The Court has to take that into consideration, and  
3                 we submit that if the Court were to issue an order like the  
4                 Milliron order here, that would not be taking into  
5                 consideration the fairness to those firms.

6                 Now, I mentioned earlier that I was going to try to  
7                 clarify the record on a number of points made by class  
8                 counsel in their papers to make sure that the Court has an  
9                 accurate record on which to decide things. There are two or  
10                 three of these points.

11                 First of all, counsel says in their papers that our  
12                 fee application includes time from the Ayyad payer class in  
13                 our numbers.

14                 It does not, and I don't know where they got the  
15                 argument that it does.

16                 I would refer your Honor to, for example, the  
17                 Burson declaration of March 3rd at paragraph 48, in which he  
18                 says such time is excluded.

19                 My declaration of the same date, at paragraph 17,  
20                 which says the Sprint time is subscriber class time, not  
21                 payer class time.

22                 Mr. Farino's declaration at paragraph 5, Mr.  
23                 Franklin's declaration at paragraphs three and four, et  
24                 cetera, and I could go down all of them. The statement that  
25                 we included time from the case that has been carved out is

1 wrong. It is just incorrect.

2 Secondly: There is a chart in class counsel's  
3 papers that purports to show -- it is at page 19 of their  
4 brief -- it purports to show our time divided up by case.  
5 It is all wrong. I don't know where they got any of those  
6 numbers.

7 They claim, for example, that my firm claimed  
8 \$532,000 plus \$33,000 from the Ayyad payer class, and that  
9 we claimed zero from the Nextel class.

10 That is completely wrong.

11 If you look at my declaration from March 3rd, the  
12 \$532,000 Nextel time.

13 Similarly, with regard to Mr. Bursor, they claim  
14 that he has \$413,000 of payer class time. That was  
15 subscriber class time, if you look at his declaration.

16 I could go through all of the errors on the chart,  
17 but my point is the Court should make its own review of the  
18 declarations. And when you do, your Honor, you will see  
19 that we are seeking compensation for time in the Sprint  
20 subscriber class case, the Robertson case, and Molfetas and  
21 Lee, not the Ayyad payer class.

22 The second point counsel make in their papers is  
23 that the Ayyad trial was a loss for the plaintiffs or that  
24 it is debatable somehow whether it was. I hear the Court  
25 saying it's heard enough about that, and I am not going

1       to -- I am not going to belabor it, other than the fact that  
2       we got an order declaring their ETF illegal, and I don't  
3       know how that could be a loss.

4                  The third point in their papers is that the Sprint  
5       subscriber class claims that we brought are worthless  
6       because either Mr. Bursor or I said so at the final approval  
7       hearing in Verizon. I don't know how much your Honor wants  
8       to hear about that. But, there was no statement made at any  
9       final approval hearing that our Sprint subscriber class  
10      claims or any subscriber class claims are worthless.

11                 I think Mr. Bursor just got done telling your Honor  
12      that we are on the brink of obtaining an injunction worth  
13      tens of millions of dollars against the collection of  
14      flat -- or collection activities or flat ETFs. That doesn't  
15      sound worthless to me.

16                 In the Verizon case we also didn't say it was  
17      worthless. However, in the Verizon case, there was nobody  
18      left at the time that the settlement became effective who  
19      was a current subscriber and still had a flat ETF because  
20      Verizon had prorated two years earlier. So in that case, it  
21      was a vanishing class. Here it is not.

22                 Sprint very, very recently adopted prorated ETFs,  
23      and there are still a lot of people among its current  
24      subscribers who have flat ones, and there is no injunction  
25      in the settlement.

1               Okay. In their papers they say that the Sprint  
2 subscriber class claim in California was really that the  
3 flat ETFs tethered existing subscribers to their contracts.  
4 Our claim in the Sprint subscriber class case in California  
5 was that we wanted an injunction because the fees were  
6 illegal. That was our plan, and we were on the brink of  
7 obtaining such an injunction.

8               Okay. Finally, there is -- the Court asked me in  
9 Milliron and it referred to it in its order, how much money  
10 are you asking for.

11              I will give your Honor the answer that I gave the  
12 court in Milliron. We are asking to be compensated fairly,  
13 and this is how I think the Court should think about fair  
14 compensation, and this -- this -- this also gets to the  
15 objection to class counsel's fee as well. The Court needs  
16 to satisfy itself that the time and the work being claimed  
17 by class counsel is what they claim it is.

18              It is not credible that 8600 hours for \$4 million  
19 in lodestar were incurred in a case that was filed in which  
20 nothing happened other than a settlement. No private client  
21 would pay \$4 million for that. No private client would  
22 accept that there are 8600 hours in connection with that.  
23 We urge the Court to scrutinize those claims or appoint a  
24 special master to do so.

25              Your Honor observed in the Milliron case that the

1       lodestar claimed by one of those counsel was excessive and  
2       not credible, and the claim in that case on behalf of Freed  
3       & Weiss was for a lodestar of \$711,000. There are firms on  
4       that side of the table, a number of them, that claim a  
5       lodestar much higher than that. The Court should take a  
6       look in the interests of fairness.

7                  Then the Court should take a look respectfully at  
8       the work that we did and the accomplishments that we  
9       achieved, and the Court should weigh the quantity of the  
10      work, the quality of the work, the quantity -- the quality  
11      of the achievement of all counsel together and make a fair  
12      fee award, and that is what we are urging, your Honor.

13                 If the Court has any questions, I will be happy to  
14      respond.

15                 THE COURT: I have no questions.

16                 MR. PLUTZIK: Thank you.

17                 THE COURT: Mr. DePalma?

18                 MR. DE PALMA: Good afternoon, your Honor.

19                 Joseph DePalma of Lite, De Palma, Greenberg & Rivas  
20      appearing for my firm.

21                 Your Honor, we are I think the only law firm  
22      involved today that is in a different position than they  
23      were in at the last hearing.

24                 We are no longer involved in the case. As your  
25      Honor knows, we withdrew from the case. We don't have a

1 client, and therefore, we take no position today with  
2 respect to the adequacy or the fairness of the settlement.  
3 I don't think we can, and I certainly know that the Court  
4 wouldn't want to hear my opinion without a client, but we do  
5 seek a fee for the work that we performed while we were  
6 involved in the case.

7 We are seeking nothing for any work we did, and  
8 there wasn't any after our withdrawal. Like all persons who  
9 have submitted fee applications, I am assuming a premise,  
10 and the premise I am assuming is that your Honor is going to  
11 approve this new revised settlement as being fair,  
12 reasonable and adequate.

13 Assuming that happens, then, your Honor, our  
14 papers, my declaration, our brief, and our motion I think  
15 establish that we conferred a substantial benefit to the  
16 class.

17 I have the benefit of going last, so that I could  
18 really rely on much of what was already said. I will not  
19 belabor the point regarding the notice, but my view is that  
20 I could think of nothing more substantial than providing the  
21 class with their new process rights that they are entitled  
22 to. These constitutional rights are I think paramount to  
23 all matters.

24 If the Court does approve the new settlement on a  
25 new notice plan that it finds to be Rule 23 compliant and

1 compliant with the Constitution, it is my firm along with  
2 the efforts of my former colleagues who conferred that  
3 benefit on the class.

4 Now, there are a number of ways for the Court to  
5 determine how to award a fee if in its discretion it decides  
6 to do so. The way we chose in our papers is a little bit  
7 different. It is not to say it is better or worse than any  
8 other way, but we looked at the due process rights as being  
9 difficult to quantify.

10 There are ways we could do it. Mr. Bursor did a  
11 very good job of putting numbers on it, but what we felt is  
12 that a better approach, at least for our firm, was to look  
13 at our lodestar, and we submitted my declaration that sets  
14 forth what the lodestar is, and then seek a multiplier based  
15 on that given that we took the case on a contingent basis,  
16 there was risk involved.

17 And in seeking a multiplier of 1.5, we tried to  
18 come well within the range of the Cendant safe harbor  
19 provision, which entitles counsel to seek upwards of a  
20 multiplier in three or four in some case.

21 So we think our fee request is, in our view,  
22 modest, given the work that we did and given the substantial  
23 benefits that we gave to the class assuming that this  
24 settlement is approved.

25 If the new notice is deemed compliant, I think

1 paragraph 13 of my declaration mentions that that means that  
2 286,000 additional individual notices were mailed and about  
3 1428 Rule 23 compliant notices were given that were not  
4 given earlier.

5 So, your Honor, I think that again listening to the  
6 instructions you gave to other counsel, not repeating  
7 anything either from the last hearing or what is in the  
8 papers, I think our papers are very detailed.

9 We mentioned in the papers that if indeed there is  
10 going to be scrutiny, we are certainly willing and have  
11 offered to submit our time records for in-camera review, so  
12 the Court could determine, if it needs to, anything further  
13 beyond my declaration.

14 That's it, your Honor. I rest on my papers, unless  
15 the Court has any questions.

16 THE COURT: No questions,

17 MR. DE PALMA: Thank you.

18 THE COURT: All right.

19 Who is going to go first?

20 MR. BOYLE: I will, your Honor.

21 Thank you, your Honor.

22 I just wanted to respond to Mr. Burson's arguments  
23 with respect to notice.

24 First of all, with respect to the motion to strike,  
25 I don't want to belabor the point, but Mr. Burson had from

1       May 21 to June 2nd to raise the issue with the Court and  
2       seek discovery. He didn't do so. That was 12 days -- he  
3       had from May 21 to October 7th to seek discovery, so he  
4       could amend his objection. That was 138 days. Mr. Burson  
5       didn't do that either. He waited until the 149th day and  
6       the last day to make a motion to strike.

7                   So the motion is clearly untimely, but more  
8       importantly, it is legally deficient, your Honor, and  
9       because the motion was made, I want to cite the Court to UAW  
10      vs. General Motors Corp. 235 FRD 383, wherein the Court  
11      rejected Mr. Burson's argument about subdivision (d) of  
12      Federal Rule of Evidence 1101 stating that the list is not  
13      an exhaustive list, and specifically holding in the context  
14      of a fairness hearing, that hearsay objections and  
15      objections, expert qualifications based on the Federal Rules  
16      of Evidence are not appropriate. It is a fairness hearing,  
17      not a trial, despite Mr. Burson's efforts to turn this into  
18      a massive ongoing litigation. This is an attempt to settle  
19      the case. The motion is improper, and it should be denied.

20                  Mr. Burson also doesn't do the Court any favors  
21      when he misinterprets the time line of events with respect  
22      to the discovery that was conducted.

23                  He referred significantly to the Rice deposition,  
24      which your Honor will recall when you were asked to recall  
25      the telephone conversation that we had with your Honor from

1           the deposition. That deposition was taken before the first  
2           fairness hearing and was directed towards the efforts to  
3           identify the settlement class as a whole. And the  
4           deposition questions that were asked and that were not  
5           answered were efforts directed towards sub-classes, which at  
6           that point in time of the Court had not ordered to occur.

7           The Court did order subsequently that such efforts  
8           to identify smaller groups of individuals should occur. Mr.  
9           Rice undertook the investigation of what that would take,  
10          put it in his declaration, which he says is based on  
11          personal knowledge, and obviously conversations with Amdocks  
12          instead of the vendor on that issue.

13          Mr. Burson had 149 days to inspect that declaration  
14          and determine whether or not a second deposition was  
15          required. He determined it was not. It goes directly to  
16          the credibility of the arguments he makes here today.

17          Now, with respect to the Rice declaration in and of  
18          itself, Mr. Burson would give you the impression that it is  
19          a very simple issue here, do you expend the money set forth  
20          in the Rice declaration or do you not.

21          But the Rice declaration addresses much more than  
22          simply the out-of-pocket expenses associated with  
23          undertaking these specific endeavors.

24          In paragraph 22 -- I'm sorry -- in paragraph 21,  
25          Mr. Rice indicates that all of this stuff is going to have

1 to be done real time in connection with an ongoing business  
2 that handles emergencies all of the time and has to make  
3 contingencies for emergent events like hurricanes and wild  
4 fires, and there are massive updates to that system.

5 During the process of these updates, these data  
6 queries that we would be making to attempt to identify  
7 individual class members can be corrupted and destroyed, and  
8 there is no way to predict for your Honor when that will  
9 happen, when it might happen, and what effect it would have.

10 So your Honor gets a time line, but it is  
11 specifically said to be subject to these potential  
12 contingencies, and obviously, if we had a contingency, let's  
13 say we said it would take two months, and then all of a  
14 sudden in the middle of the second month, the data was  
15 destroyed.

16 Your Honor had already set a time line. Notice is  
17 going out on this date, the fairness hearing is on this  
18 date, and we had to come back up, your Honor, hold on, hold  
19 on, we got to start over again.

20 This I think was the essence of the Court's ruling  
21 when it said it is not reasonable to force Sprint to pour  
22 through all of its data, to basically stop its operations or  
23 work around the clock to try to get this list, and the Court  
24 found that the Rice declaration and the efforts set forth in  
25 there made it clear that that effort would not be

1 reasonable.

2 There is no magic formula. No matter what Mr.  
3 Bursor says, it is a pragmatic case-by-case analysis. Your  
4 Honor had before you the Rice declaration, and I think took  
5 a pragmatic view of what was in it.

6 Indeed, Sprint says to your Honor, we don't think  
7 some of these efforts are reasonable, but we will undertake  
8 whatever the Court orders.

9 I think the Court looked at it and said, this  
10 really is not really workable because we have all of these  
11 possible delays in addition to the cost and expense that is  
12 a known factor. So I think your Honor absolutely came to  
13 the right conclusion, and again, we were willing to do it,  
14 but we didn't think it was appropriate to put our entire  
15 business on hold to search for these lists, and I think your  
16 Honor concluded the same thing.

17 So, you know, I would again stress that the Rice  
18 declaration as a whole totally supports your Honor's  
19 conclusion, and again, it has not been rebutted.

20 With respect to Mr. Weir's declaration and then Mr.  
21 Rice -- or Mr. Bursor's other legal argument in his  
22 supplemental declaration, your Honor, it is important to  
23 know what we are comparing now.

24 Mr. Weir queried a portion of his data base that  
25 was created specifically for the Ayyad litigation. It was

1       created with significant time and expense, very similar to  
2       that which Mr. Rice described in his declaration, and  
3       indeed, Mr. Dupon provided your Honor with an affidavit  
4       talking about how much money and time it took to create that  
5       data base.

6                   Mr. Weir only queried a part of it and came up with  
7       certain people that he thought he had identified as  
8       individually liable customers.

9                   Well, he only queried a part of it. It wasn't a  
10      Sprint data base in situ. It was one that was specially  
11      created for the litigation, and then Mr. Bursor takes that  
12      percentage and says, I can look at your collectibility  
13      analysis, and I can tell you despite the fact that I told  
14      this Court it was 9.1, now I can tell you with certainty  
15      it's 4.1.

16                  Well, neither of those are certain and neither of  
17       those declarations are proper. Your Honor, I have, because  
18       we got that, I believe it was yesterday or Monday evening, I  
19       think it was Monday evening, we got these again belated  
20      submissions by Bursor. We had to get Mr. Dupon on the line  
21      and he was in flight, so he did provide a supplemental  
22      declaration, which I would like to hand up to the Court for  
23      your consideration when you are examining and determining  
24      what weight, if any, to give to Mr. Weir's declaration and  
25      whether or not to give any weight to Mr. Bursor's legal

1 argument declaration, if I may.

2 THE COURT: Have you shown this to counsel?

3 MR. BOYLE: I will now, your Honor. I brought it  
4 to court this morning.

5 THE COURT: What is this going to add?

6 MR. BOYLE: Well, it is going to give you an  
7 opportunity to understand the context of what Mr. Weir is  
8 saying that he searched because the impression --

9 THE COURT: But that is in your letter to me  
10 responding and asking to strike Mr. Weir's last minute  
11 declaration. In your letter, you put it in context, that it  
12 is data that was generated in the context of that  
13 litigation, et cetera. All of the arguments that you are  
14 making now are in your letter, so is it going to take --

15 MR. BOYLE: No, it's not. It would just be the  
16 factual background for the fact that it was the Ayyad data  
17 base, not a Sprint in situ data base. That is all. If the  
18 Court doesn't find it helpful --

19 THE COURT: I will let you hand it up. I may or  
20 may not consider it at the end of the day, but we at least  
21 we will mark it, and we'll have it, just like I have the  
22 Weir declaration, and there is a motion to strike the whole  
23 Rice declaration for that matter, and I will take that all  
24 under advisement and figure it out, and I'm going to try to  
25 put everything together in context.

1 Make sure counsel gets a copy.

2 MR. BOYLE: May I approach, your Honor?

3 THE COURT: You may.

4 Make sure my law clerk has a copy, too.

5 Lis, mark that as Boyle 1 with today's date.

6 (Exhibit Boyle 1 marked.)

7 (Document handed to the Court.)

8 MR. BOYLE: Your Honor, with respect to the  
9 Robertson issue, if your Honor will recall, that direction  
10 from the Court --

11 THE COURT: It says to the extent that that was  
12 erroneous or you got it corrected --

13 MR. BOYLE: Right, number one, December 3rd when we  
14 signed the settlement agreement, it was not erroneous.  
15 There was a reconsideration motion pending.

16 Second, your Honor gave that direction in paragraph  
17 16 of your original -- footnote 16 of your original opinion  
18 when you were contemplating a complete renotice of the  
19 class.

20 On reargument, that complete renotice was taken off  
21 the table, so we would have had a situation, where some of  
22 the folks that got publication notice would not have had  
23 reason to go back to the website and view the settlement  
24 agreement.

25 So, again, the information was correct at the time

1       it was there, and there was not a complete renoteice, and I  
2       think Mr. Burson's opposition to the motion for reargument  
3       notes that, you know, this was one issue that your Honor  
4       directed, and you need to consider if you are not going to  
5       make it a complete renoteice, so again, that was the logic --

6                  THE COURT: Why would that be something that you  
7       don't consider on a partial notice on renoteice --

8                  MR. BOYLE: Well, because, you know, I could see  
9       somebody coming back and going, oh, anybody who got  
10      publication notice only got, you know, the website and  
11      looked at the settlement agreement and saw the unchanged  
12      version and now you changed it. So, you know, you can look  
13      at it either way, but, again, December 3rd, the big  
14      settlement agreement was signed. That information was  
15      accurate.

16                  Again, your Honor, that information was there to  
17       describe who is in the Ayyad payer class. It was not a  
18       notice directed to the Robertson class. It was part of a  
19       definition to say, okay, because Ayyad has in it Ayyad  
20       payer, Ayyad subscriber, Roberson, so it said Ayyad payer is  
21       this group in this case except for these folks, and it was  
22       only meant as a description of the case and its procedural  
23       status on that date.

24                  So, again, it was accurate on the date it was  
25       given, and considering that we didn't change the rest or any

1 other portions of the settlement agreement, and we already  
2 had a part of the notice out there, it didn't seem like we  
3 should change that because, again, it was accurate on the  
4 day the settlement agreement was signed, so that was the  
5 logic that was employed there.

6 With respect to this idea that the notice is meant  
7 to mislead the class by saying Sprint never was found to  
8 have any -- done anything illegal with respect to an ETF,  
9 that's a ridiculous argument, your Honor.

10 The notice itself says: This notice is not  
11 intended to imply that Sprint has done anything unlawful in  
12 this case, so it is both limited to the notice, which  
13 obviously didn't make any finding of unlawfulness, and there  
14 was no finding of unlawfulness in this case.

15 You get into this whole chase your tail thing on  
16 this because, as I understand it, as a result of Mr.  
17 Burson's appeal of the order in the Ayyad payer case, that  
18 order allegedly finding illegalities was vacated.

19 So you know what?

20 You're going to send out another notice about that.  
21 The notice did its job. It was supposed to tell people what  
22 the case was about and give them notice of how to object or  
23 claim, and it certainly met that standard, your Honor.

24 Finally, with respect to the Carlo case, Mr. Burson  
25 contends that there were no numbers on reasonable efforts

1 because they undertook the efforts, but what Mr. Bursor  
2 fails to point out is that the Court also said certain other  
3 efforts suggested by the objectors would be unduly time  
4 consuming and expensive, not necessarily fruitful, and it  
5 did not analyze any anticipated result from those unduly  
6 time consuming, expensive and not necessarily fruitful  
7 efforts, so the idea that you have to put out numbers there  
8 is just again a misstatement of the law.

9 Thank you, your Honor.

10 MR. CECCHI: Judge, very briefly.

11 Picking up on Mr. Plutzik's last point, which was  
12 critical of the lodestar submitted by class counsel, Mr.  
13 Plutzik makes the point and says, well, it's about \$4  
14 million in lodestar, and the Larson case was filed whenever  
15 it was filed, and, you know, you have to carefully  
16 scrutinize that.

17 We respectfully suggest, Judge, that that is more  
18 of the sleight of hand that's been employed by the  
19 Bursor/Plutzik objectors throughout this proceeding. It's a  
20 sleight of hand because he knows full well that the \$4  
21 million in lodestar is not just my time or it's not just  
22 Seeger Weiss' time, it's not just Freed & Weiss' time. It  
23 is the time of all of the other lawyers around the country  
24 who had ETF cases who have joined with us in support of this  
25 settlement.

1                   It is the time of all of the lawyers who support  
2                   this settlement, had cases, which were released to this  
3                   case, who didn't object to the diligent review of this  
4                   settlement and came to the conclusion, as your Honor knows  
5                   from the last hearing, that this was fair and reasonable and  
6                   part of the class. It includes the time of Liefffar  
7                   Cabraser, a national law firm, highly respected. It  
8                   includes the time of Mr. Beazek who spoke the last time. It  
9                   includes the time of Carey & Danis, all firms who had cases  
10                  for many years. It also includes the time of Mr. Strange  
11                  who had a case for many, many years.

12                  What ever anybody wants to say about some of the  
13                  theories in that case, he had a certified arbitration, 48  
14                  states, where notice went out, and it includes his time, his  
15                  million dollars in lodestar, and it includes Mr. Weiss'  
16                  time, who Mr. Plutzik well knows was litigating these ETF  
17                  cases just as long as Mr. Plutzik has, so to suggest with a  
18                  sleight of hand that that \$4 million is somehow unreasonable  
19                  because it only includes the Larson time is just that, it's  
20                  a sleight of hand.

21                  I also want to mention our fee, which they also  
22                  know. When we walk out of here, Judge, and your Honor  
23                  exercises your discretion and awards an appropriate and fair  
24                  fee to everyone, guess what, we have to work for another two  
25                  years without getting compensated, by getting compensated

1 for whatever you give us now, because we are going to be  
2 dealing with this case on appeal, and that is what I signed  
3 up for, and I am not complaining. I'm just pointing it out.  
4 We will be dealing with their appeal for years. We will be  
5 dealing with the claim process for years, so our fee, to  
6 suggest that somehow that lodestar is not appropriate in a  
7 cross-check context section is simply a sleight of hand.

8 Mr. Plutzik asked your Honor a hypothetical  
9 question, and I won't go into all of the details about the  
10 Ayyad case. Well, how they could consider it a loss, the  
11 Ayyad case, when we declared the ETF illegal?

12 You don't have to listen to me, because the answer  
13 is so plain. The jury also found in favor of Sprint that  
14 Sprint's damages swamped the ETFs. It's very apparent, but  
15 you don't have to trust me.

16 What you can rely upon is the judgment of their  
17 co-counsel, Ms. Mottek, who in a recent hearing when Mr.  
18 Burson attempted to up-end the Executive Committee's  
19 structure of that state court case in California said as  
20 follows:

21 And the last thing I want to say, your Honor, is  
22 the reason we oppose Mr. Burson trying the case - referring  
23 to the AT&T case - is because we lost in Sprint.

24 You don't have to rely upon me. You can rely upon  
25 their co-counsel, who honestly and fairly assessed what

1       happened in Ayyad in California. It is appended to Mr.  
2       Taylor's declaration, which we've submitted, and it's on  
3       page 17 of the transcript. It's Ms. Mottek's assessment of  
4       what happened, their co-counsel.

5                 Also, just going back to the lodestar, that \$4  
6       million in lodestar includes Ms. Mottek's time, their  
7       co-counsel, who, as she did in T Mobile, looked at this  
8       settlement and said it's fair, an unsupporting class  
9       counsel. Again, sleight of hand.

10               You know, I heard Mr. Plutzik making an impassioned  
11      plea, and the point that I would wish to make about that is:  
12      This is a contingency business. This is a very risky  
13      business that we are all in, the lawyers who speak to your  
14      Honor today.

15               You know, the lawyers on this side of the table  
16      know something about risk and know something about  
17      contingency, because we were the same lawyers who were  
18      appointed by the United States Federal Court in this  
19      district to represent a national class in Verizon, which  
20      they settled in California when they had a California case,  
21      they settled our case and they gave us nothing. They got a  
22      seven and a half million dollar fee, and they gave us  
23      nothing.

24               THE COURT: Mr. Cecchi, that is an old argument  
25      now.

1 MR. CECCHI: Thank you.

2 The benefit conferred, I think again going to the T  
3 Mobile framework, they have a business model. They filed  
4 state court cases for state court classes.

5 We had a national case. Again, it is not my fault  
6 that they had a state court case. Molfetas, they lost.  
7 Robertson was a judgment against them. If anything, that  
8 didn't confer a benefit. It diminished the settlement value  
9 of our national cases. It was not my decision to focus my  
10 efforts in California.

11 I had a national case. They never had a national  
12 case. They still don't have a national claim for a Sprint  
13 national ETF claim, except for the belated filing of that  
14 Lee case, which I already spoke to.

15 Finally, the chart Mr. Bursor handed up, the, quote  
16 unquote, reverter.

17 You know, even if you take his argument about what  
18 the words in the settlement agreement mean and the words in  
19 our stipulation mean, and what I would say to your Honor is  
20 when we are assessing what it means, I just go back to what  
21 I said when the argument was sprung without notice to me.  
22 The third day of the hearing back in March, I said it was  
23 not a reverter, never intended to be a reverter, when I  
24 didn't have notice that it was going to be an issue. I told  
25 your Honor what we thought and that your Honor had

1 discretion. If your Honor didn't like the military, you  
2 could do whatever you want. That's what I told you when I  
3 didn't have notice of his argument.

4 I submit that that statement in conjunction with  
5 our stipulation and all of the words in the alleged reverter  
6 speaks clearly to what it was intended to be, cypres.

7 But even if you take his chart, where he claims  
8 that the reverter is going to be \$2 million to Sprint, it  
9 doesn't make any sense when you compare it to the words,  
10 because Sprint or a reverter is when the money goes back to  
11 you, the class doesn't take it, the money goes back to you,  
12 and you keep it.

13 Even under his theory, they were never keeping the  
14 money. They had to go out dollar for dollar, as he said the  
15 last time, and buy calling cards, and that's not a reverter,  
16 and pox on me if I thought that it was a good idea to send  
17 calling cards to the military.

18 I have nothing further, Judge.

19 MR. SUPRENANT: Thank you, your Honor.

20 Dominic Suprenant.

21 I am principally going to address as succinctly as  
22 I can the reasonableness and the objections. I know your  
23 Honor wants us to be succinct. I am going to respond to  
24 direct quotes made by Mr. Bursor.

25 After that, your Honor, and it should take no more

1 than ten to 12 minutes, I would like to address -- Sprint  
2 has no position on fees, but I would like to address factual  
3 statements made by Mr. Plutzik, so the Court has, in my  
4 view, a correct understanding of what happened.

5 Your Honor said quote: Be succinct and address  
6 matters raised by Mr. Bursor.

7 That is what I will do.

8 Mr. Bursor said, quote, that he never seen, quote,  
9 a worse result for a class. It was the worst result for a  
10 class I've seen.

11 He said in Ayyad, we were, quote, awarded 100  
12 percent of our damages.

13 Quote: Awarded 100 percent of injunctive relief.

14 Quote: We were awarded 73 million in cash,  
15 and 225 million in debt relief.

16 Quote -- what he also said -- he said in his brief  
17 that he had been awarded 299 million at page 41, and he said  
18 what matters is dollars in the class members' pockets.

19 Your Honor, I saw your Honor taking some notes in  
20 response to some things Mr. Bursor was saying, and I think  
21 it is very important that I correct the misstatements that  
22 he made. I have some demonstratives I am going to show, two  
23 copies, your Honor.

24 THE COURT: Did you give counsel a copy?

25 MR. SUPRENNANT: Yes, your Honor.

1           When Mister --

2           THE COURT: Wait, wait, one second.

3           (Court and Clerk confer)

4           Go ahead.

5           MR. SUPRENTANT: Your Honor, this was just a board I  
6 put up when Mr. Cecchi was speaking. It is Ms. Mottek, a  
7 member of the Executive Committee, telling Judge Smith, who  
8 Mr. Bursor tried to --

9           THE COURT: Wait. Is that part of this?

10          MR. SUPRENTANT: Yes, your Honor.

11          THE COURT: Is that in here?

12          MR. SUPRENTANT: Yes.

13          THE COURT: It says, "Conclusion," Exhibit 1, is  
14 that what it is?

15          MR. SUPRENTANT: Your Honor, let me --

16          THE COURT: Oh, I found it.

17          MR. SUPRENTANT: Thank you, your Honor.

18          I am sorry. They were a little bit out of  
19 sequence.

20          THE COURT: It starts with, "And the last thing" --

21          MR. SUPRENTANT: "And the last thing I want to say,  
22 your Honor is the reason we oppose Mr. Bursor trying the  
23 case is because we lost in Sprint."

24          That is a member of Executive Committee. That's  
25 Ms. Mottek. That's not me.

1                   I want to look at the Court's statement of decision  
2                   in light of Mr. Bursor telling your Honor he was awarded  
3                   more than \$299 million, telling your Honor that he got 73  
4                   million in cash and 225 million in debt relief.

5                   This is the statement of decision. It is the  
6                   conclusion at the end of 26 pages, and it says:

7                   "The Court will enter judgment" -- this is Exhibit  
8                   1, your Honor to Document 235.

9                   "The Court will enter judgment in favor of  
10                  plaintiffs on their claims, and in favor of Sprint on its  
11                  cross-claim. After the setoff of monetary relief neither  
12                  the class nor Sprint is entitled to any monetary recovery."

13                  Judge Bonnie Sebraw: "The class is not entitled to  
14                  any monetary recovery."

15                  Not 299 million, not 73 million.

16                  Well, let's try to rehabilitate Mr. Bursor's  
17                  credibility. Maybe he was meaning to talk hyperbolically  
18                  that he got \$299 million in debt relief.

19                  No, that is also false.

20                  This is the relief that the Court gave.

21                  "The Court orders that for those class member  
22                  accounts still in the possession of Sprint that Sprint must  
23                  reverse the charges for any charged but unpaid flat ETFs and  
24                  is enjoined from attempting to collect the unpaid flat  
25                  ETFs."

1                   As Mr. Bursor knows from the evidence and testimony  
2                   at the Ayyad trial, that debt up to ten years old that we  
3                   still own is minuscule. It is minuscule. It's either been  
4                   written off or sold years ago a penny on the dollar to debt  
5                   collectors, so it is not a monetary recovery. It is a  
6                   minuscule reversal of the debt.

7                   That is Judge Bonnie Sebraw's conclusion, so Mr.  
8                   Bursor misrepresented what happened.

9                   THE COURT: Are both aspects of that on appeal?

10                  MR. SUPRENTANT: I am going to get to that, your  
11                  Honor.

12                  THE COURT: That's a yes or no answer.

13                  Are both of those aspects on appeal?

14                  MR. SUPRENTANT: Yes, but with some clarification  
15                  that I will get to.

16                  Okay. So let's now -- that was the thing I was  
17                  going to say is your Honor -- your Honor was obviously  
18                  interested in where are things now, what is the current  
19                  status.

20                  And what happened, and this is very important, your  
21                  Honor, on the topic of injunctive relief, the jury verdict  
22                  was something that the court in California could not get  
23                  around. She could not award any money to the class in light  
24                  of the verdict, so in her statement of decision, this  
25                  decision, your Honor, Exhibit 1, Document 235, at footnote

1       7, she invited the plaintiffs to bring a motion for a new  
2       trial on damages, and they did, and she granted it.

3           And as I told your Honor before, the result of her  
4       granting that was to vacate the judgment for all purposes,  
5       and I got tired, and Sprint got tired of Mr. Bursor  
6       misrepresenting the status of that judgment on his website,  
7       of misrepresenting it to your Honor, and of misrepresenting  
8       it to Judge Smith.

9           So after the initial fairness hearing we had, we  
10      brought a motion to get essentially Judge Smith, the current  
11      judge, who I think your Honor spoke with by phone, to  
12      clarify the statute.

13           This is Exhibit A to Document 388.

14           "The 12/24" "judgment is not divisible into a  
15      judgment on the Court's decision on the complaint against  
16      Sprint and a separate judgment on the jury's verdict on  
17      Sprint's cross-complaint against the plaintiff class. This  
18      is the law as a matter of general jurisprudence."

19           She then goes on, and this is the March 23rd order,  
20      your Honor.

21           "This is particularly appropriate," in other words,  
22      vacating the entire judgment, "is particularly appropriate  
23      on the facts of this case where the Court's decision on the  
24      validity of Sprint's ETF created an intertwined cross-claim  
25      for breach of contract.

1                   "The order granting a new trial on Sprint's  
2 cross-claim damages vacated the judgment in its entirety for  
3 all purposes except for review on appeal.

4                   "Given that as a matter of law," the, quote, "'one  
5 final judgment,'" end quote, "has been vacated for all  
6 purposes except for review on appeal, the Court cannot give  
7 effect to any part of that judgment."

8                   Half of what Mr. Bursor and Mr. Plutzik told you is  
9 inaccurate. They have no verdict. There is no finding of  
10 illegality --

11                  THE COURT: All right.

12                  Counsel, I have given you some leeway rearguing old  
13 stuff.

14                  MR. SUPRENTANT: It was in direct response --

15                  THE COURT: He made one statement, and I said we  
16 are not going to get into who won or lost, and that is what  
17 this is about all over again.

18                  I already have that information. That is why I was  
19 only concerned about whether or not there had been a change  
20 in the appeal.

21                  When I asked Mr. Bursor that question, I was being  
22 serious, I thought perhaps I missed something, that there  
23 had been a change in the appeal. That is only the reason I  
24 asked. All of this stuff is not new.

25                  MR. SUPRENTANT: This is new, your Honor.

1                   This order is after the initial final fairness  
2 hearing, and I do think it is important to go to -- we now  
3 have a clarifying order from Judge Smith on where the  
4 parties stand, and that was the purpose.

5                   THE COURT: Okay,

6                   MR. SUPRENANT: Moving on to the issues of it's  
7 been found illegal and the injunctive relief, as I said, I  
8 think this order is relevant and touches on that topic on  
9 the findings of illegality, and what we were told, your  
10 Honor, and it is important, and this is new, this is a new  
11 argument, your Honor.

12                  We were told -- your Honor was told by Mr. Bursor  
13 that the injunctive relief in California was certain. It  
14 was going to happen. He was talking about a tentative order  
15 that was issued at the very end of 2008, early 2009. And  
16 there was a tentative decision, and that tentative decision  
17 by Judge Smith that Mr. Bursor is referring to -- Judge  
18 Smith was a new judge to the case. Judge Bonnie Sebraw had  
19 retired, and her tentative decision, what she said  
20 essentially is, Well, I think Judge Bonnie Sebraw found it  
21 illegal, and I think I am going to follow that in a  
22 tentative order, and so, you know, I may order some  
23 injunctive relief.

24                  What happened then, your Honor, I believe it was  
25 January 27th, it was the grant of a new trial, okay, and

1       that is again the relevance of this. Judge Smith in the  
2       tentative order at the end of December, early January, said  
3       in light of Judge Sebraw's order, I will follow it.

4           But then what happened is that the foundation was  
5       taken away with the grant of the new trial on damages, and  
6       the order was vacated, so I think it is highly uncertain  
7       that they would get any injunctive relief in California.  
8       That was a big part of the presentation. It is new, your  
9       Honor, and it is inaccurate.

10           Now, they said we didn't get any injunctive relief  
11       in this case.

12           What about the poor subscribers who still have a  
13       flat rate ETF --

14           THE COURT: What would be the value of that  
15       injunctive relief, though? He used a rather formidable  
16       number there.

17           MR. SUPRENANT: Well, it would have been the value  
18       of not assessing ETFs in California on a going forward  
19       basis, and I don't have a precise number for that, your  
20       Honor. I do not believe that order would have been granted.  
21       That is how I would respond to your Honor's question.

22           Going to the inadequacy of the settlement because  
23       it doesn't have any injunctive relief, and the injunctive  
24       relief was certain in California, as I just explained, I  
25       think it is highly uncertain and speculative at best.

1                   But the class here does get relief, your Honor.

2                   Current class members do get relief if they swear under  
3                   penalty of perjury that they attempted to terminate, and the  
4                   only reason they didn't is because Sprint said if you  
5                   terminate, we will charge you an ETF.

6                   They will get relief. They will get \$35 for 360  
7                   minutes, so I think that that is certain relief, not the  
8                   speculative relief that Mr. Plutzik and Mr. Bursor referred  
9                   to.

10                  Now, I do have to respond, your Honor, if I could  
11                  do so briefly. Mr. Bursor must have said a dozen times that  
12                  I said Sprint would get the money back from the cypres.

13                  Your Honor pointed out, and Mr. Cecchi pointed out,  
14                  he wasn't reading the whole sentence, and the whole  
15                  sentence, which Mr. Cecchi then read and Mr. Bursor read, I  
16                  don't think there's any way to read it in any way other than  
17                  perfectly consistent with what Mr. Cecchi's closing comments  
18                  were. We were not going to end up with a nickel in our  
19                  pocket, and the full quote makes that absolutely clear.

20                  Mr. Bursor said, what does claim mean. Claim is  
21                  highly uncertain for the poor class member who hasn't made a  
22                  claim. They don't know.

23                  Your Honor, that is all a sleight of hand as well.

24                  What the claim plainly means is claims that are  
25                  alleged in the complaints that are being settled. It is a

1 different situation, fundamentally different than in the  
2 Chaing case.

3 Your Honor, I do want to make one point. I don't  
4 want to get cross-eyes on your Honor on a jury verdict, and  
5 I'm not going to argue what it means, but I do think there  
6 is a new point that I would like to make that goes to the  
7 Girsh factor of the risk, and I wish I had made this point  
8 last time.

9 But there has been one jury verdict in the ETF  
10 case, your Honor, one jury verdict. And if this case  
11 continues, all of the cases tried to a jury, I think the  
12 most important precedent for your Honor in trying to adjudge  
13 the Girsh factors what might happen is what a 12-member jury  
14 did after a three-week trial.

15 What they did was they said the class breached  
16 their contract. Sprint recovered 73 million and change, and  
17 their actual damages caused by the class' breach was 225  
18 million.

19 When you add the damages to what we recovered, had  
20 already previously recovered, it exactly matches the ETF  
21 charge, so I think this is a very telling and perhaps the  
22 most probative piece of date on what kinds of risk the  
23 plaintiff's claims face, if this case continued.

24 THE COURT: By the way, just for the record, your  
25 new demonstratives, I marked them Suprenant 1 with today's

1 date 10/21/09.

2 (Exhibit Suprenant 1 marked)

3 MR. SUPRENANT: Thank you, your Honor.

4 Now, I am now done responding to the objections and  
5 to Mr. Bursor, and I tried to be as succinct as I could.

6 I do have a number of points that I would like with  
7 your Honor's permission to make very quickly with respect to  
8 the points Mr. Plutzik made on the fee application.

9 Sprint doesn't take a position on how your Honor  
10 should award those fees, but there are things that I think  
11 are relevant to your Honor's exercise of that discretion.

12 MR. BURSOR: I object to that. I don't think he  
13 has standing to address the issues, particularly since  
14 Sprint is not taking a position, why do we have to listen to  
15 him talk about fees?

16 THE COURT: Good point.

17 MR. SUPRENANT: Your Honor, do they want to mislead  
18 your Honor? Is that what they are saying, they want to  
19 mislead your Honor?

20 Your Honor, one of the first things I want to  
21 say -- the first thing I want to say goes to the value to  
22 the class because of their outrageous settlement demand. I  
23 am the only person in this courtroom that knows that. They  
24 worked -- they did the work.

25 THE COURT: To that extent he has standing at least

1 to educate the Court at least on what happened with regard  
2 to the attempts that were made by your side to settle it.

3 But now this sounds like old material, because I  
4 know you spent an awful lot of time last time going back and  
5 forth and telling me how the settlement was, and what the  
6 demand was, and then what happened, and it fell apart, and  
7 all of that is on the record. I have all of the  
8 transcripts.

9 MR. SUPRENANT: It will take 30 seconds.

10 THE COURT: 30 seconds.

11 Go ahead.

12 MR. SUPRENANT: In the Spring of 2008, I got a \$214  
13 million demand from Mr. Plutzik for a national settlement.

14 One week into the trial, I got a \$99 million demand  
15 from Mr. Plutzik for a national settlement.

16 The day before the jury came back on June 12th, Mr.  
17 Plutzik told me -- Mr. Bursor told me he didn't have  
18 approval from the Executive Committee, but if we agreed to  
19 somewhere in the \$30 million range, he thought he could  
20 settle it. I think that those provide relevant data for  
21 your Honor's exercise of discretion.

22 If your Honor is uncertain about my standing to  
23 correct the record, I follow your Honor's guidance.

24 THE COURT: Go ahead.

25 MR. SUPRENANT: If your Honor has no questions, I

1 am done.

2 THE COURT: I have no questions.

3 MR. BURSOR: Your Honor, Mr. Boyle cited a case --

4 THE REPORTER: I can't hear you over here.

5 THE COURT: Mr. Boyle cited a case, 235 Fed. 3rd,  
6 383, is that what you think he was talking about?

7 MR. BURSOR: Yeah.

8 THE COURT: He cited that case.

9 MR. BURSOR: I heard that for the first time just  
10 now, so I was hoping the Court would give me a few minutes  
11 to address that.

12 That case, UAW vs. General Motors Corp., I just had  
13 a quick opportunity to review it now.

14 Mr. Boyle cited it for the proposition that the  
15 Federal Rules of Evidence do not apply at a fairness  
16 hearing.

17 THE COURT: Right.

18 MR. BURSOR: It does not, so it appears that the  
19 objection that was made in the UAW case was an objector came  
20 in and said the Court cannot receive evidence by declaration  
21 or affidavit because those are hearsay, and the Court must  
22 take live testimony and must not consider declarations or  
23 affidavits. And furthermore, before the Court can hear  
24 expert testimony, we have to have disclosures of the --  
25 expert disclosures provided for under Rule 26, so an

1 objector comes in and says you can't even look at  
2 declarations.

3 Obviously, that is not what we are asserting.

4 THE COURT: Well, it sounds like some of what you  
5 are asserting. You asserted it was hearsay. You asserted  
6 that he was not an expert, giving lay opinion, that  
7 therefore, it doesn't mean it meets the requirements of  
8 expert testimony.

9 Look, I am going to read the case, and I am going  
10 to make a determination ultimately as to what I think it  
11 holds.

12 MR. BURSOR: Well, two points about that, your  
13 Honor.

14 We don't say that you can't consider Mr. Rice's  
15 declaration because it is a declaration.

16 For example, on summary judgment or motions,  
17 testimony is often taken by declaration rather than live.  
18 That is not the problem with Mr. Rice's declaration.

19 The problem with Mr. Rice's declaration is there  
20 are several layers of hearsay. There are other evidentiary  
21 objections to the content of Mr. Rice's declaration.  
22 Nowhere does he say that he personally made these  
23 investigations. Nowhere does he say that he communicated  
24 with anybody in Amdocks.

25 THE COURT: Okay.

1 MR. BURSOR: So that's one point.

2 The second point about UAW, your Honor, is that it  
3 is a single case from the Eastern District of Michigan that  
4 when we shepherdized, we find it has never been followed  
5 ever, no other court. So to the extent it says anything, it  
6 is an outlier, and it doesn't say that you can have a  
7 declaration by somebody who lacks personal knowledge and  
8 consider that at a fairness hearing.

9 The last point, your Honor, I mean, if you are  
10 interested in the jury verdict, if could I just make clear  
11 very quickly, this jury verdict right here --

12 THE COURT: The verdict sheet?

13 MR. BURSOR: Yeah -- yes.

14 THE COURT: You learned, though. That is good you  
15 remembered.

16 (Laughter)

17 MR. BURSOR: I caught myself fast.

18 This answer to Question 3 that supposedly swamped  
19 our damages, this is what Judge Sebraw vacated.

20 The rest of the verdict is intact, and the finding  
21 of illegality is intact.

22 What happened with Question 3, your Honor, is that  
23 this is the exact dollar amount of the ETFs that were  
24 charged, but not paid, and Judge Bonnie Sebraw gave some  
25 erroneous jury instructions that led the jury to conclude

1       that the class had breached their contract by not paying  
2       these unpaid charges. They did not find that this was  
3       Sprint's damages, and that is why this got set aside.

4           So this was not a finding of Sprint's damages, that  
5       is what Judge Bonnie Sebraw -- and I mean to her very  
6       credit, she recognized that she made an error that it  
7       affected the jury verdict, so that's gone.

8           That remains, the finding of the illegality  
9       remains, and the award of the \$225 million definitely  
10      remains, so we got \$299 million.

11          They are taking it up on appeal. I don't know how  
12       it is going to turn out, but to come in and say this verdict  
13       says we swamped them, that's not right.

14          Thank you, your Honor.

15          MR. SUPRENTANT: Your Honor, I won't respond to  
16       that, but I urge your Honor to read the statement during the  
17       trial because the basis on which it was granted is not  
18       anything related to what Mr. Burson just said in his attempt  
19       to mislead the Court.

20          On January 29th, 2009 grant of a new trial, it's in  
21       the record, and the basis that Judge Bonnie Sebraw gave was  
22       that the jury inadvertently, they must have concluded, there  
23       is not a jury instruction mentioned, certainly not  
24       negatively mentioned, and I don't think mentioned at all in  
25       the order, she said the jury must have decided it was lawful

1 and ignored my five separate instructions that I, the Court,  
2 will decide.

3 That is not the basis for the granting of a new  
4 trial, your Honor.

5 MR. BURSOR: If I can just respond.

6 THE COURT: All right. No more from you two.

7 (Laughter)

8 MR. DOHERTY: Your Honor, if I may, Richard Doherty  
9 on behalf of Jessica Hall. That argument about --

10 THE COURT: Yes. You can speak.

11 You can come up here, or you can stay there.

12 Your argument must be short because everyone else  
13 has said --

14 MR. DOHERTY: No one has ever called me short.

15 THE COURT: -- no, your argument I was speaking  
16 about because --

17 (Laughter)

18 MR. DOHERTY: Mr. Cecchi stated, in talking about  
19 lodestar, that at the time class counsel, including all of  
20 these other firms, including Freed & Weiss, who he stated  
21 worked on this case as long as Mr. Bursor has, my assumption  
22 is he is referring to Hall versus Sprint, our case, which  
23 Freed & Weiss, which was filed way back in '04, and Freed &  
24 Weiss were the court appointed co-lead counsel on the case,  
25 and we already made our arguments about the impropriety that

1       we had about Freed & Weiss being here, so I'm not going to  
2       get into that.

3                  But Mr. Cecchi, when he said it includes all Fried  
4       & Weiss' time way back when, whether the lodestar in this  
5       case includes time that was spent on our case, Hall versus  
6       Sprint, I would just like some clarification on that.

7                  MR. CECCHI: Yes.

8                  THE COURT: The answer is yes.

9                  MR. CECCHI: Yes.

10                 The case was part of the release and the time for  
11       Mr. Weiss spent in that case, including working on the class  
12       certification, briefing, et cetera, was included, yes.

13                 MR. DOHERTY: We believe it's improper, your Honor,  
14       and Mr. Weiss is no longer representing Ms. Hall, and Hall  
15       is in fact an objector.

16                 THE COURT: Just wait one second, please.

17                 Do you want to add anything else, Mr. Doherty?

18                 MR. DOHERTY: No, your Honor, I do not.

19                 THE COURT: Okay.

20                 MR. EVOLA: Your Honor, I'm Robert Evola.

21                 THE COURT: Mr. Evola will deal with the rest.

22       Okay.

23                 Are you the last lawyer that we have left to speak?  
24       I believe you are.

25                 Okay. We will hear from you. You can come to the

1 podium or speak from there, your choice.

2 Again, this should be on new matters. I am giving  
3 you the same admonition I have given to everybody else.

4 MR. EVOLA: Good afternoon, your Honor.

5 THE COURT: Just give me one second. I want to  
6 read some stuff here.

7 Can I just address Mr. DePalma for a minute?

8 Mr. DePalma, you no longer have a client in this  
9 case, right?

10 I am trying to refresh my recollection as to  
11 exactly what happened with you --

12 MR. DE PALMA: Your Honor --

13 THE COURT: -- I had my notes when you argued, but  
14 now --

15 MR. DE PALMA: -- I originally came into the case  
16 representing the objectors, Galleguillos, et al. I was one  
17 of several counsel for Galleguillos --

18 THE COURT: That is right, okay.

19 MR. DE PALMA: -- and while I was counsel for  
20 Galleguillos, as your Honor recalls, we did work up to the  
21 four-day hearing and throughout the four-day hearing.

22 Subsequent to that hearing, I withdraw and was  
23 replaced with Mr. Pinilis who is in my stead.

24 I seek a fee --

25 THE COURT: For the work you did.

1 MR. DE PALMA: -- for the work I did before I  
2 withdrew.

3 THE COURT: All right. I just wanted to make sure  
4 my notes were in order, and they were. Okay.

5 MR. EVOLA: Your Honor, Robert Evola for the Hall  
6 objectors.

7 I am going to do my best, and I am absolutely going  
8 to follow your directions in addressing new matters and not  
9 old matters.

10 I would like to address some new events and some  
11 additional information that is in the record since our last  
12 hearing.

13 THE COURT: Okay.

14 MR. EVOLA: The first information, it goes to the  
15 idea -- it goes to one of Sprint's responses, the argument  
16 about reverse auction, and that is, that Sprint's argument  
17 that this settlement is actually better than the Hall  
18 settlement or the Hall demand, and therefore, there was no  
19 reverse auction.

20 And there has been a lot of discussion, I know  
21 there was the last time, about the debtor class, the  
22 forgiveness of debt, and that is particularly important to  
23 us to explain this, because back on March 16th, you asked a  
24 direct question to Mr. Suprenant, which was:

25 Do you agree or disagree that the demand with

1 regard to that category was 14 and a half actual dollars and  
2 wiped the debt off?

3 He corrected that it was actually 13 and a half,  
4 and regarding the debt, and he said that was not a topic  
5 that was discussed.

6 Since then Sprint has filed declarations and Brad  
7 Lakin on behalf of us had filed declarations, but even  
8 Sprint's declaration of attorney/client on the case says --  
9 reveals that in fact the debt relief was a subject that was  
10 discussed,

11 On page 15 of Sprint's brief in response to -- in  
12 response to our objection, I quote:

13 At the end of the process, and it is their emphasis  
14 on the end of the process, meaning their negotiations with  
15 Sprint, all that was left of the request for full debt  
16 relief was on behalf of class members who were charged an  
17 ETF and can prove it, a dollar for dollar credit.

18 I submit, a dollar for dollar credit is  
19 significant. It's pretty good relief, and for those who  
20 could provide no proof except for declaring penalty of  
21 perjury a \$25 credit.

22 So, indeed, there is absolutely no doubt that debt  
23 relief was a significant part of the demand that the Hall  
24 class was seeking from Sprint, and that is even according to  
25 the attorney/client's declaration, which submitted by

1 Sprint.

2 In that declaration he uses the term all in, and I  
3 would add that Brad Lakin's declaration, he categorically  
4 denies that there was ever an all in demand for 13 and a  
5 half million that did not include debt relief.

6 In fact, again, attorney/client's declaration and  
7 Sprint's brief that I just read from shows that at the end  
8 in their emphasis on the term, end of our negotiations, our  
9 demand still included either a dollar for dollar credit for  
10 part of that class or \$25 for part of that class.

11 To emphasize that a suggestion that the settlement  
12 here is better for the class than the demand that was sought  
13 in Hall, we submitted the transcript of a hearing in Madison  
14 County, where Richard Burke, an attorney for Freed & Weiss,  
15 discussed this case in the Hall settlement, and he said, and  
16 I will quote it because I don't want to get it wrong, they  
17 claim there was a hijacking of the Hall case, but what they  
18 didn't tell was that they had an exclusive agreement with  
19 Sprint from January of 2008 to July of 2008 when we  
20 negotiated with them, and with Sprint we have in the record,  
21 and what Sprint said is that they were greedy and  
22 belligerent, and they wouldn't negotiate in good faith, so  
23 they cancelled the exclusion.

24 Now, we hadn't discussed attorney fees -- hadn't  
25 negotiated attorney's fees in the Hall case at that point,

1 so when they say that the Hall objectors and that class was  
2 greedy, they are talking about our demands for more on  
3 behalf of the class.

4 So to the extent that Sprint tells you that their  
5 settlement is better than the Hall class and the Hall  
6 objectors were demanding from Sprint, your Honor should find  
7 that that is not true.

8 My second and my last point has to do with the  
9 effect of the revised notice on the reasonableness of the  
10 amount. I don't want to repeat any of the arguments that we  
11 made with regard to the adequacy, other than to say at this  
12 point, that the amount available to the class has been  
13 reduced by approximately \$800,000, and there is no new  
14 relief available to the class despite that reduction in the  
15 amount that's available to them.

16 I am not saying that the class didn't receive a  
17 benefit of adequate -- of better notice, I mean, they needed  
18 that. But the fund that they were to draw their benefit  
19 from has been reduced, and there's been no new compensation  
20 added for the class members.

21 Those are my remarks.

22 THE COURT: Does anyone want to respond to --

23 MR. SUPRENANT: Your Honor --

24 THE COURT: Mr. Suprenant?

25 MR. SUPRENANT: -- I am Dominic Suprenant. I will

1           be very brief, your Honor.

2           Mr. Lakin claims and Mr. Cohen -- what happened  
3           last time just to place it in context, without any briefing,  
4           Mr. Cohen went on for about 45 minutes and for the first  
5           time said we demand full debt relief of \$2.3 billion.

6           I had some hurried telephone calls with Mr. Klein  
7           in Chicago representing -- my co-counsel in Hall versus  
8           Sprint, and tried to get my hand around this brand new  
9           claim, and your Honor asked me the question that they quote,  
10          and I answered it correctly.

11          And just to place it very quickly in context, we  
12          had some discussions with Mr. Lakin in January and February  
13          of 2008 prior to our trial in May and June 2008 in the Ayyad  
14          case, so we were talking to Mr. Lakin, and we broke off. We  
15          were way, way far apart, and we told him, okay, we are going  
16          out, and we will try the Sprint case.

17          Then after that was over, we restarted  
18          negotiations. And at the beginning of the restart of the  
19          negotiations, Mr. Lakin sent us an almost completely blank  
20          term sheet. It is attached as Exhibit 1 to Document 368,  
21          and the one thing that this virtually blank term sheet said  
22          was waiver of charges not collected, and it was on the basis  
23          of that July 2nd mostly blank term sheet that Mr. Cohen made  
24          the argument last time, new to us, we heard it for the first  
25          time in the courtroom, that their demand was \$2.3 billion.

1           About that, I would like to say two things.

2           One, your Honor, it is irrelevant, the theory of  
3           reverse auction based on a claim.

4           Let's assume Mr. Lakin had held firm and he said,  
5           Sprint, we are not going to settle with you unless you give  
6           \$2.3 billion in debt relief. That is irrelevant. If they  
7           ask for some very large number, and we said no, we are not  
8           interested. That is just irrelevant. If they make a note  
9           unreasonable settlement demand.

10           But as Mr. Klein, who was talking with Mr. Lakin  
11           declares in Exhibit 6, in Document 389, he said I was  
12           disappointed when I got that mostly blank term sheet, that  
13           as the discussions progressed, Lakin significantly retracted  
14           any claim for full debt relief, and where we were at the end  
15           of the day is if you long distance -- if the debt was sold,  
16           you would get long distance cards, and you would get cash if  
17           you couldn't prove you had an ETF charge suit, but you  
18           declared it, you would get cash.

19           So the notion that there was a \$2.3 billion debt  
20           relief on the table when the negotiations broke off is not  
21           true. It is not relevant.

22           And, in fact, the proposed settlement actually does  
23           give debt forgiveness. If you can provide you were charged  
24           an ETF, you would get \$25 if you swore to it, if you  
25           couldn't prove it, and \$90 if you could prove it.

1                   If we had sold the debt or didn't have proof -- no,  
2 let me restate that, your Honor.

3                   If you terminated early in the contract, you would  
4 get \$25 debt forgiveness. If you had proof, if you  
5 terminated late, you would get 90.

6                   If the debt had been sold or you couldn't prove it,  
7 you would get a waiver of activation fee.

8                   So the settlement that is before your Honor  
9 compares quite favorably to where the Hall plaintiffs were  
10 at the end of the negotiations when they broke off and --  
11 and we said, okay, we don't think we can reach a deal with  
12 you, and we stopped negotiating with them, so the reverse  
13 auction argument is relevant, and it's also they have their  
14 facts wrong.

15                  Thank you, your Honor.

16                  THE COURT: Okay.

17                  Counsel, that I think completes the hearing. I  
18 will certainly take into account all of the arguments that  
19 have been made. I know this is a hotly disputed matter. I  
20 have poured through the transcripts of the last hearing and  
21 I intend to do the same again in conjunction with what we  
22 heard here today.

23                  Yes?

24                  MR. CECCHI: I didn't mean to stand so quickly,  
25 Judge.

1                   THE COURT: You thought you were leaving, or you  
2                   were going to say something to the Court?

3                   (Laughter)

4                   MR. CECCHI: I was just going to say before we wrap  
5                   up, obviously if your Honor has any further questions of  
6                   myself, Mr. Weiss, or the other Mr. Weiss about any aspect,  
7                   we are here to answer them.

8                   THE COURT: What I will do is after I have a chance  
9                   to go through this by myself and with my law clerk, if there  
10                  are any additional areas of inquiry, I may set something  
11                  down and ask people to supplement the record.

12                  I don't want you supplementing it on your own. I  
13                  may not need anything else. I don't want to start this  
14                  whole thing with the faxes and emails starting again.

15                  I think I have enough. If I need anything else, I  
16                  will notify counsel, and then you can supply it obviously on  
17                  notice to everybody else.

18                  That will be all.

19                  Thank you.

20                  MR. CECCHI: Thank you, your Honor.

21                  MR. BOYLE: Thank you, your Honor.

22                  MR. SUPRENANT: Thank you, your Honor.

23                  THE COURT: Have a nice trip, those of you who are  
24                  traveling back home.

25                  (Court adjourned.)